

No. 16530

VOL 3114

United States  
Court of Appeals  
for the Ninth Circuit

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B. A. WILLIAMS, II,

Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Hawaii

FILED

NOV 2 - 1959

PAUL P. O'BRIEN, CLERK



No. 16530

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United States  
Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For the Appellant: B. A. Williams II, also known  
as Byron A. Williams II,

FRANCIS P. O'NEILL,  
Suite 1415, 1700 Broadway,  
Denver 2, Colorado,

IRVING P. ANDREWS,  
Suite 203, American Woodmen Annex,  
Denver 5, Colorado.

For the Appellee United States of America:

LOUIS B. BLISSARD,  
United States Attorney,

DARAL G. CONKLIN,  
Assistant United States Attorney,  
P. O. Box 654,  
Honolulu, Hawaii.



District Court of the United States  
for the District of Hawaii

Cr. No. 11,312

UNITED STATES OF AMERICA

vs.

B. A. WILLIAMS II, also known as BYRON A.  
WILLIAMS II

WAIVER OF INDICTMENT

B. A. Williams, also known as Byron A. Williams II, the above named defendant, who is accused of violating 18 USC § 1341, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

/s/ B. A. WILLIAMS,  
/s/ BYRON A. WILLIAMS,  
Defendant.

/s/ FRANCIS P. O'NEILL,  
Counsel for Defendant.

[Title of District Court and Cause.]

## INFORMATION

### Count I

The United States Attorney Charges:

That on or about April 25, 1958, in the District of Hawaii, and within the jurisdiction of this Court, B. A. Williams II, also known as Byron A. Williams II, having devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses and representations, to wit: a check kiting scheme involving the United States National Bank, Denver, Seattle-First National Bank, Seattle, and the Bank of Hawaii, Honolulu—for the purpose of executing such scheme and artifice caused to be placed in a post office and authorized depository for mail matter two checks drawn on the Petroleum Corporation of America's account in the said Seattle-First National Bank in the amounts of \$28,000.00 and \$16,000.00, at a time when the balance there was \$2,196.85, such checks being deposited to the personal account of Defendant at said Bank of Hawaii, and thereafter sent and delivered by the Post Office Department to said Seattle-First National Bank, the named drawee, for clearance and collection. 18 USC § 1341.

### Count II

The United States Attorney Further Charges:

That on or about April 30, 1958, in the District of Hawaii, and within the jurisdiction of this

Court, B. A. Williams II, also known as Byron A. Williams II, the identical person named in Count I of this Information, having devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses and representations, to wit: a check kiting scheme involving the United States National Bank, Denver, Seattle-First National Bank, Seattle, and the Bank of Hawaii, Honolulu—for the purpose of executing such scheme and artifice caused to be placed in a post office and authorized depositary for mail matter two checks drawn on the account of the Petroleum Corporation of America in the said Bank of Hawaii in the amounts of \$27,000.00 and \$18,000.00, at a time when the balance there was \$10.65, such checks being deposited to the account of said corporation at said Seattle-First National Bank, and thereafter sent and delivered by the Post Office Department to said Bank of Hawaii, the named drawee, for clearance and collection. 18 USC § 1341.

### Count III

The United States Attorney Further Charges:

That on or about May 2, 1958, in the District of Hawaii, and within the jurisdiction of this Court, B. A. Williams II, also known as Byron A. Williams II, the identical person named in Counts I and II of this Information, having devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses and representations, to wit: a check kiting scheme involving the United States National Bank, Denver, Seat-

tle-First National Bank, Seattle, and the Bank of Hawaii, Honolulu—for the purpose of executing such scheme and artifice caused to be placed in a post office and authorized depository for mail matter two checks drawn on the Petroleum Corporation of America's account in the said Seattle-First National Bank in the amounts of \$28,000.00 and \$17,500.00, at a time when the balance there was \$7,067.19, such checks being deposited to the account of said corporation at said Bank of Hawaii, and thereafter sent and delivered by the Post Office Department to said Seattle-First National Bank, the named drawee, for clearance and collection. 18 USC § 1341.

#### Count IV

The United States Attorney Further Charges:

That on or about May 6, 1958, in the District of Hawaii, and within the jurisdiction of this Court, B. A. Williams II, also known as Byron A. Williams II, the identical person named in Counts I, II, and III of this information, having devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses and representations, to wit: a check kiting scheme involving the United States National Bank, Denver, Seattle-First National Bank, Seattle, and the Bank of Hawaii, Honolulu—for the purpose of executing such scheme and artifice caused to be placed in a post office and authorized depository for mail matter three checks drawn on the commercial account of the Petroleum Corporation of America in the said Bank of Hawaii in the amounts of \$25,-



000.00, \$15,000.00, and \$6,200.00, at a time when the balance there was \$510.65, such checks being deposited to the account of said corporation at said Seattle-First National Bank, and thereafter sent and delivered by the Post Office Department to said Bank of Hawaii, the named drawee, for clearance and collection. 18 USC § 1341.

### Count V

The United States Attorney Further Charges:

That on or about May 8, 1958, in the District of Hawaii, and within the jurisdiction of this Court, B. A. Williams II, also known as Byron A. Williams II, the identical person named in Counts I, II, III, and IV of this Information, having devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses and representations, to wit: a check kiting scheme involving the United States National Bank, Denver, Seattle-First National Bank, Seattle, and the Bank of Hawaii, Honolulu—for the purpose of executing such scheme and artifice caused to be placed in a post office and authorized depository for mail matter two checks drawn on the Petroleum Corporation of America in the said Seattle-First National Bank, each in the amount of \$25,000.00, at a time when the balance there was \$4,997.78, more or less, such checks being deposited to the account of said corporation at said Bank of Hawaii, and thereafter sent and delivered by the Post Office Department to said Seattle-First National Bank, the named drawee, for clearance and collection. 18 USC § 1341.

## Count VI

The United States Attorney Further Charges:

That on or about May 14, 1958, in the District of Hawaii, and within the jurisdiction of this Court, B. A. Williams II, also known as Byron A. Williams II, the identical person named in Counts I, II, III, IV, and V of this Information, having devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses and representations, to wit: a check kiting scheme involving the United States National Bank, Denver, Seattle-First National Bank, Seattle, and the Bank of Hawaii, Honolulu—for the purpose of executing such scheme and artifice caused to be placed in a post office and authorized depository for mail matter two checks drawn on the personal account of Defendant in the said United States National Bank in the amounts of \$1,000.00 and \$50,000.00, at a time when the balance there was \$7.82, more or less, such checks being deposited to the account of said corporation at said Bank of Hawaii, and thereafter sent and delivered by the Post Office Department to said United States National Bank, the named drawee, for clearance and collection. 18 USC § 1341.

Dated: February 2, 1959, at Honolulu, Hawaii.

LOUIS B. BLISSARD,

United States Attorney,

District of Hawaii,

/s/ By DARAL G. CONKLIN,

Asst. United States Attorney.

[Endorsed]: Filed February 2, 1959.

[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled cause, do hereby find the defendant, B. A. Williams II, also known as Byron A. Williams II,

As to Count I: Guilty;

As to Count II: Guilty;

As to Count III: Guilty;

As to Count IV: Guilty;

As to Count V: Guilty;

As to Count VI: Guilty;

as charged in the Information herein.

Dated: Honolulu, T. H., this 3rd day of February, 1959.

/s/ JOHN S. HOFFMAN,  
Foreman.

[Endorsed]: Filed February 3, 1959.

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[Title of District Court and Cause.]

MOTION TO SET ASIDE THE VERDICT OF  
THE JURY, OR IN THE ALTERNATIVE,  
FOR A NEW TRIAL

Comes Now the defendant above named, by and through his attorney, and hereby respectfully requests this Court to enter an order setting aside the verdict of the jury heretofore entered, or in the alternative, to grant to he defendant a new trial.

As grounds for this motion, the defendant states and shows unto the Court:

1. That the Court erred as a matter of law in not entering a judgment of dismissal at the conclusion of the Government's evidence, and again at the conclusion of all of the evidence.

2. That the verdict is not support by substantial evidence, nor were all of the material allegations of the information proven as a matter of law.

3. That no scheme or fraudulent scheme was shown by the evidence as set forth in all six counts of the information, and that the Government did not by any evidence prove each and every material allegation of the information, to-wit: that three banks, as alleged in the information, were involved in the fraudulent scheme of the defendant.

Wherefore, defendant prays that this Court enter an order setting aside the verdict of the jury, or in the alternative, grant to the defendant a new trial.

/s/ FRANCIS P. O'NEILL,  
Attorney for Defendant.

[Endorsed]: Filed February 16, 1959.

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[Title of District Court and Cause.]

### MOTION TO DISMISS INFORMATION

The Defendant moves that the information be dismissed on the following grounds:

1. The information does not allege sufficient facts to constitute an offense against the United States.

2. That the Information filed herein omits one of the essential elements of the offense sought to be charged and is therefore fatally defective as a matter of law.

Wherefore, Defendant moves that information heretofore filed herein be dismissed.

Respectfully submitted,

/s/ IRVING P. ANDREWS,  
Attorney for Defendant.

[Endorsed]: Filed April 1, 1959.

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District Court of the United States  
For The District of Hawaii

No. 11,312

UNITED STATES OF AMERICA,

vs.

B. A. WILLIAMS II, also known as BYRON A.  
WILLIAMS II.

### JUDGMENT AND COMMITMENT

On this 3rd day of April, 1959, came the attorney for the government and the defendant appeared in person and by counsel, Irving P. Andrews, Esquire.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of having devised a scheme

and artifice to defraud and for obtaining money by means of false and fraudulent pretenses and representations, to wit: a check kiting scheme involving the U. S. National Bank, Denver; Seattle-First National Bank, Seattle; and Bank of Hawaii, Honolulu; for the purpose of executing such scheme and artifice caused to be placed in a post office and authorized depository for mail matter various checks drawn on the Petroleum Corp. of America's account or on the personal account of defendant, in the aforesaid banks in the amount of \$1,000 to \$50,000 at a time when the balance therein was \$7.82, more or less, such checks being deposited to the account of said corporation and thereafter sent and delivered by the P. O. Dept. for clearance and collection, in violation of § 1341, 18 USC, as charged in Counts I-VI; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six Months, and Fined One Thousand Dollars (\$1,000.00) as to each of Counts I, II, III, IV and V (a total of \$5,000.00). The sentences of imprisonment shall be concurrent with each other, and the execution thereof is suspended and the defendant is placed on probation for a period of Five



Years for this date as to each of Counts I through V. As to Count VI, imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Five Years from this date. The periods of probation as to each count shall run concurrently with each other.

The fines shall be paid within Ninety (90) Days from this date; otherwise the defendant shall stand committed until payment of the fines.

Jurisdiction of this case and supervision of probation will be transferred to the United States District Court for the District of Colorado.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JON WIIG,  
United States District Judge.

/s/ WM. F. THOMPSON, JR.,  
Clerk.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

B. A. Williams, II, also known as Byron A. Williams II, 330 Petroleum Club Building, Denver 2, Colorado, appellant.

Francis P. O'Neill, 330 Petroleum Club Building, Denver 2, Colorado, and Irving P. Andrews, Suite 203, American Woodmen Annex, Denver 5, Colorado, attorneys for appellant.

Offense: Mail Fraud (18 USC § 1341).

Sentenced April 3, 1959, Counts One (1) through Five (5) fine of \$1,000.00 on each of said counts and six (6) months on each of said counts to be served concurrently; imposition of the periods of confinement of each of said counts suspended and defendant placed on probation for a period of five (5) years. Fine of \$5,000.00 to be paid within ninety (90) days from date of sentence.

Count Six (6) Court suspended imposition of sentence and placed defendant on probation for a period of five (5) years to be served concurrently with probation granted on counts one (1) through five (5). Supervision and jurisdiction of defendant transferred to the District of Colorado.

I, B. A. Williams II, also known as Byron A. Williams II, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated at Denver, Colorado this 8th day of April, A.D., 1959.

/s/ B. A. WILLIAMS II,  
Appellant.

[Endorsed]: Filed April 10, 1959.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 229 consists of a statement of the names and addresses of the attorneys of record and of the various pleadings, exhibits, and transcript of proceedings as hereinbelow listed and indicated:

Originals:

Waiver of Indictment.

Information.

Verdict.

Motion to Set Aside the Verdict of the Jury, or  
in the Alternative, for a New Trial.

Motion to Dismiss Information.

Judgment and Commitment.

Notice of Appeal.

Designation of Record.

Counter-Designation of Record on Appeal.

Order Extending Time for Filing Record and  
Docketing Appeal.

Motion for Extension of Time.

Affidavit.

Order.

Exhibits:

Plaintiff's Nos. 1 through 28, 29-A through 29-D, 30, 31-A through 31-C, 32-A through 32-D, 33, and 34, and Defendant's "A" (in separate envelope).

Transcript of Proceedings.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 7th day of July, 1959.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
Clerk.

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In The United States District Court  
For The District of Hawaii

Criminal No. 11,312

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

B. A. WILLIAMS II, also known as BYRON A.  
WILLIAMS II, Defendant.

### TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S. District Court, Honolulu, T. H., commencing on February 2, 1959.

Before: Hon. Jon Wiig, Judge, and a jury.

Appearances: Daral G. Conklin, Esq., Assistant

U. S. Attorney, appearing for the Plaintiff. Francis P. O'Neill, Esq., appearing for the Defendant. [1]\*

\* \* \* \* \*

Mr. Conklin: Ladies and gentlemen of the jury, our opening statement is very short and it is very simple. It relates to what the government expects to prove, of course. The government expects to prove that during the months of April and May, 1958, part of April and part of May, the Defendant B. A. Williams II engaged in what is commonly known as check-kiting scheme from the three banks which you heard the Court mention. The government expects to prove that Mr. Williams made deposits to his personal account in the Bank of Hawaii of checks drawn on his Seattle Corporate Company about April 25th. Thereafter, about April 30th, he made deposits in his Seattle account of checks drawn on the Bank of Hawaii. Thereafter, he made deposits in the Bank of Hawaii of checks drawn on his Seattle account. Thereafter, checks deposited in the Seattle account were drawn on the Bank of Hawaii. Thereafter deposited in the Bank of Hawaii [10] checks drawn on the Denver Bank. The government expects to prove that.

The government expects to prove that at all times mentioned, starting on or about April 25 and continuing through May 14, 1958, the amount of all the checks was greatly in excess of any and all bank balances mentioned and held by the Defendant in any and all of those banks.

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\* Page numbers appearing at top of page of Reporter's Transcript of Record.

The government further expects to prove that the Defendant did this knowingly and with an intent to devise a scheme.

The government further expects to prove that the United States Mails were used for carrying out of this scheme and that the Defendant knew and intended that the United States Mails would be used.

Thank you.

The Court: Mr. O'Neill, do you wish to make an opening statement at this time?

Mr. O'Neill: We would like to reserve that, your Honor.

The Court: Very well. We will take a recess before you call your first witness.

Ladies and gentlemen of the jury, you are excused for a 10-minute recess. The Court will stand at recess.

(A recess was taken.) [11]

#### After Recess

The Court: The record will show that the jury is present, the Defendant and his counsel. Will you call your first witness?

Mr. Conklin: The government calls Dominick Ranieri.

DOMINICK S. RANIERI

a witness called by the Plaintiff, being duly sworn,  
testified as follows:

Direct Examination

Q. (By Mr. Conklin): Would you state your name, please, sir?

A. My name is Dominick S. Ranieri, R-a-n-i-e-r-i, D-o-m-i-n-i-c-k.

Q. And where do you live, Mr. Ranieri?

A. 2120 Kapiolani Boulevard.

Q. That is here in Honolulu?

A. That's right.

Q. Are you acquainted with Mr. B. A. Williams II?

A. Yes, sir, I am.

Q. And do you see him here in Court today?

A. I do.

Q. Would you point him out, please?

A. Yes, the gentleman in the dark suit.

The Court: The record will show that the witness has identified the Defendant.

Q. (By Mr. Conklin): Mr. Ranieri, when did you first [12] become acquainted with Mr. Williams?

A. I first met him, I believe, the exact date was November 30, 1956.

Q. 1956? And what was your relationship with Mr. Williams? Did you see him from time to time or just met him once or what?

A. Well, I met him at that time because he was with my former wife's nephew, the wife to whom I was married at that time was his aunt. And he

(Testimony of Dominick S. Ranieri.)

came here on a trip and telephoned here and, of course, I went down to visit and said hello. And I was introduced to him. We spent some time together for a few days and he explained what his business was. He was in the oil business, as his father had been before him. And at that time, at the time I had no employment, and I was thinking about maybe going back to the mainland. And the way he explained the way the business was set up, drilling for oil, it sounded very interesting to me, with the result that I talked with a few of my friends in town and introduced him and explained the nature of the operation and wondered whether they would be interested.

So because of that, why, we went into business here in Honolulu. I believe it was December 3rd, the exact date that Mr. Williams decided to open an office here, and would I want to stay on and work with him as a resident manager.

Q. As what? I'm sorry. [13]

A. As a resident manager. So I talked over, I talked it over with my wife at the time. Well, she thought it sounded like a pretty good idea, so I went ahead on that basis and started to set up the office. Do you want me to go on?

Q. No. My next question would be this: You say resident manager of the business. What business are you referring to?

A. Well, it was the business of selling interests, in what they call working interest in the drilling of oil wells, which is similar to a joint venture op-



(Testimony of Dominick S. Ranieri.)

eration, where people buy in for a certain percentage, for so many dollars, and participate in the venture of drilling for oil.

Q. And were these people who were investing doing the oil drilling? A. Pardon?

Q. You say it was for the purpose of getting people to invest in oil drilling? A. Yes.

Q. Well, were these people who were investing, were they doing the oil drilling?

A. Oh, no, they were investors and, of course, the drilling was done wherever the lease happened to be on the mainland of the United States, done by a drilling contractor.

Q. And when you say drilling contractor, whom do [14] you refer to?

A. Well, a drilling contractor that would be contracted by Mr. Williams, and later on by the Petroleum Corporation of America.

Q. Now, calling your attention, Mr. Ranieri, to April and May of 1958, were you acting as such resident manager for Mr. Williams at that time?

A. Yes, sir, for Mr. Williams, I guess, and/or Petroleum Corporation of America which he had formed subsequently.

Q. Now, in April of 1958, were your duties the same as you have previously recited your duties to be when you first started?

A. Yes, essentially the same, the same way right through.

Q. And in April of 1958, were you responsible

(Testimony of Dominick S. Ranieri.)

for any deposits made to checking accounts here in the Territory?

A. I don't understand how you mean that responsible, sir.

Q. Well, let me rephrase that. Did the Petroleum Corporation of America have any accounts in local Territorial Banks in April, 1958?

A. Yes, sir. There was an account in the name of the Petroleum Corporation of America at the Bank of Hawaii Main Branch, Main Office. [15]

Q. And in April of 1958, did B. A. Williams II have any checking accounts in banks in the Territory of Hawaii?

A. Yes, sir, he had a personal—it was in his name, in the name of B. A. Williams II, at the Bank of Hawaii.

Q. And you personally, did you personally have any activity with regard to those accounts, that is, the corporation account and the personal account?

A. Well, yes, sir. As checks would come in, people investing in the ventures, I would by instructions from Mr. Williams make deposits—well, I had no authority to withdraw—I just made the deposits as they came in. I would advise him when he was away from here how much was deposited on a certain date.

Q. Do you know who had the authority to draw against those accounts?

A. The only one so far as I know was Mr. B. A. Williams.

Q. Now, in April 1958 did you deposit any



(Testimony of Dominick S. Ranieri.)

checks in Mr. B. A. Williams II account drawn by Mr. B. A. Williams II?

A. I am pretty sure I did. As I recall, I believe it was April. Whether it was in his personal account or the Petroleum Corporation Account, I am a little hazy. I have all of that in a statement.

Q. What's that? [16]

A. I have all that information in a statement which I made to the postal inspector right at that particular time. And I have to refresh my memory as to dates and which accounts the checks were deposited in.

Q. Well, at the time you made that statement—you are referring to an affidavit which I have in my possession, is that correct? A. Yes, sir.

Q. And at the time you made that affidavit, were you then familiar with the dates and the various transactions? A. Yes, sir, I was.

Q. And you are now asking to see that affidavit in order to answer the question?

A. It would help me, yes, sir.

Mr. O'Neill: Your Honor, I think the questions he is asking are leading and suggestive. And the witness made a statement that there are documents which would refresh his recollection, without going into a statement. I don't think it is proper at all at this time.

The Court: Are there any documents or records, books or deposit slips?

Mr. Conklin: They will be offered, your Honor, with regard to evidence, both the deposits, and so

(Testimony of Dominick S. Ranieri.)

forth, they will be shown both through this witness and through other witnesses. [17]

The Court: Well, let's get at the records if they are available, rather than have him make reference to a statement that he made, if you are going to offer those. Perhaps they will refresh the witness' recollection.

Mr. Conklin: Well, may counsel approach the bench, your Honor?

The Court: For what purpose?

Mr. Conklin: Well, certain checks that were deposited are not in our possession because they were in due course of the bank business returned to the depositor. Now, certain checks we do have. Certain other checks we do not have because they have been returned to the Defendant.

The Court: Well, aren't there officers or agents of the bank who can testify from their records as to the dates and amounts?

Mr. Conklin: Yes, your Honor. What we are getting at here is the fact of deposits made by the Defendant's agent.

The Court: Well, I think you are getting at that. (To the witness) You made these deposits for Mr. Williams or for the corporation in the Bank of Hawaii Main Branch during the months of April and May of 1958, is that correct?

The Witness: Yes, sir, I made deposits. That is, I had before. [18]

Q. (By Mr. Conklin): Why were those deposits

(Testimony of Dominick S. Ranieri.)

made in the various accounts in April and May of 1958?

A. On instructions by Mr. Williams to make such deposits.

(Mr. Conklin shows a document to Mr. O'Neill.)

The Court: Do you have all of those records there or photostatic copies?

Mr. Conklin: Yes, your Honor.

The Court: Why not show the whole bunch of them to Mr. O'Neill so he may examine them? He may have no objection to them going into evidence.

(Mr. Conklin hands some documents to Mr. O'Neill.)

Mr. O'Neill: As to the form of the exhibits being photostats, some originals and some photostats, we have no objection to those when properly identified.

The Court: Well, what I was trying to get at, is there a possibility of doing it the short way? First, you have no objection to the fact that some of them are photostatic copies?

Mr. O'Neill: No, your Honor.

The Court: Perhaps the witness can identify them. I don't know.

Q. (By Mr. Conklin): Mr. Ranieri, are you familiar with the signature of Mr. B. A. Williams II?

A. Yes, sir, I am. [19]

Q. I show you a printed card from the Bank of Hawaii bearing a corporate resolution of authority on one side——

Mr. O'Neill: One moment. We object to any ref-

(Testimony of Dominick S. Ranieri.)

erence to a printed card unless it is going to be marked and used and properly identified. As I understand it, he asked for his signature, if he was familiar with the signature of Mr. B. A. Williams. And now there is some reference to a corporate resolution or something which appears on a piece of paper which he has. I don't think it is proper until it has been properly marked and identified.

The Court: Well, that is what I was trying to get at, Mr. O'Neill. First, you recognize the signature B. A. Williams II?

Mr. Conklin: He does know it, yes.

The Court: Are you going to offer it in evidence?

Mr. Conklin: After I have him identify it.

The Court: Well have him identify it.

Q. (By Mr. Conklin): I ask you whether the signature of B. A. Williams appears on that card? (Handing a card to the witness.)

A. Yes, sir, it does.

Mr. Conklin: Very well, we will offer that card in evidence.

Mr. O'Neill: Your Honor, maybe I am not familiar [20] with the procedure. Is there a number?

The Court: Well, there would be a number. I dislike the practice of marking a document for identification and then having to renumber it when received in evidence, unless there is some objection. That is the only point.

Mr. O'Neill: I wasn't sure how I could keep track of them.

(Testimony of Dominick S. Ranieri.)

The Court: You are offering that as exhibit 1?

Mr. Conklin: Yes, sir.

Mr. O'Neill: We have no objection, then.

The Court: Very well. Proceed. Our procedure here is the same as it is in Denver, I am sure, Mr. O'Neill.

(The document referred to was received in evidence as Plaintiff's exhibit number 1.)

Q. (By Mr. Conklin): I show you another card, Mr. Ranieri, and ask you does Mr. B. A. Williams II signature appear on that card? (Showing a card to the witness.)

A. It looks like Mr. Williams' signature.

Q. Well, do you feel that it could be not his signature?

A. It is a little larger than that one. That is his signature.

Mr. Conklin: Very well. We would offer this card in evidence.

The Court: What type of card is that? [21]

Mr. Conklin: This is an individual checking account card.

The Court: Signature card?

Mr. Conklin: Yes, your Honor.

The Court: There being no objection, that will be received as exhibit number 2.

(The card referred to was received in evidence as Plaintiff's exhibit number 2.)

Q. (By Mr. Conklin): Mr. Ranieri, I hand you a photostat of a Bank of Hawaii deposit slip and ask you is that a copy of the deposit slip made out



(Testimony of Dominick S. Ranieri.)

by you for deposit to the account name on May 2nd, 1958? (Handing a document to the witness.)

A. Yes, it is.

Mr. Conklin: Your Honor, we offer this in evidence to be exhibit 3.

The Court: There being no objection, it will be received as exhibit 3.

(The document referred to was received in evidence as Plaintiff's exhibit No. 3.)

Q. (By Mr. Conklin): Mr. Ranieri, I show you another photostat of another Bank of Hawaii deposit slip showing a deposit to the account of the named account on the slip, dated May 7th, and ask you, is that a copy of the deposit slip you made out at that time? (Handing document to the [22] witness.)

A. Yes, sir, it is.

Mr. Conklin: We offer this as exhibit 4.

The Court: There being no objection, it will be received as exhibit 4.

(The document referred to was received in evidence as Plaintiff's exhibit No. 4.)

Q. (By Mr. Conklin): Mr. Ranieri, I show you a check drawn on the Seattle First National Bank naming the Petroleum Corporation of America as maker. Does Mr. B. A. Williams' signature appear on that? (Handing a document to the witness.)

A. Yes, sir.

Q. And did you cause this check to be deposited in the Bank of Hawaii as shown by the deposit indicated on Plaintiff's exhibit 4?

A. Yes, sir.

(Testimony of Dominick S. Ranieri.)

Q. That is the check that is indicated on this deposit slip, is that correct?           A. Yes, sir.

Mr. Conklin: Your Honor, we offer this check as exhibit 5.

The Court: What is the date of the check?

The Clerk: May 5, 1958.

The Court: There being no objection, it will [23] be received as exhibit number 5.

Mr. O'Neill: What is the amount of that?

The Clerk: \$25,003. It is \$25,000.

Mr. Conklin: A protest fee of \$3.

(The document referred to was received in evidence as Plaintiff's exhibit number 5.)

Q. (By Mr. Conklin): Mr. Ranieri, I show you a photostat of a Bank of Hawaii deposit slip dated May 8th, 1958, showing a deposit to the Petroleum Corporation of America, and I ask you is that a copy of the deposit slip that you presented on that date? (Handing a document to the witness.)

A. Yes, sir, it is.

Mr. Conklin: Your Honor, we offer this as exhibit 6.

Mr. O'Neill: May I see that, please? (Document handed to Mr. O'Neill.)

The Court: There being no objection, it will be received as exhibit 6.

(The document referred to was received in evidence as Plaintiff's exhibit No. 6.)

Q. (By Mr. Conklin): Mr. Ranieri, referring to Plaintiff's exhibit 6, I hand you a check dated May 6th, 1958, drawn on the Seattle First National

(Testimony of Dominick S. Ranieri.)

Bank, Main Branch, and I ask you, is that the check you deposited as shown on [24] exhibit 6? (Handing a document to the witness.)

A. Yes, sir.

(Mr. Conklin shows document to Mr. O'Neill.)

The Court: There being no objection, the check will be received as exhibit number 7.

(The document referred to was received in evidence as Plaintiff's exhibit number 7.)

The Court: What are those yellow slips?

Mr. Conklin: Those are tabs put in by the drawee bank.

The Court: Those tabs are part of the exhibit? I believe there is one on exhibit number 5, too.

Q. (By Mr. Conklin): Showing you a Bank of Hawaii deposit slip, a photostat thereof, dated May 12, 1958, I ask you, is that a duplicate of the deposit slip you made out on that date for a deposit to the Petroleum Corporation of America in the Bank of Hawaii? (Handing a document to the witness.)

A. Yes, sir, it is.

Mr. Conklin: We offer this as exhibit 8.

The Court: There being no objection, it will be received as exhibit number 8.

(The document referred to was received in evidence as Plaintiff's exhibit number 8.)

Q. (By Mr. Conklin): Referring to exhibit number 8, [25] Mr. Ranieri, I hand you a check drawn on the U.S. National Bank of Denver, Colorado, dated May 12, 1958, and I ask you, is that the



(Testimony of Dominick S. Ranieri.)

check that was deposited as shown on exhibit number 8? (Handing a document to the witness.)

A. Yes, sir, it is.

Mr. Conklin: Your Honor, we offer this check, which is for \$1,000, as exhibit number 9.

The Court: It will be received as exhibit number 9.

(The document referred to was received in evidence as Plaintiff's exhibit No. 9.)

Q. (By Mr. Conklin): Mr. Ranieri, I show you the original of a Bank of Hawaii deposit slip dated May 14th, 1958, showing a deposit on that date to the account of Petroleum Corporation of America, and I ask you, is that the deposit slip you made out on that date? (Showing a document to the witness.)

A. Yes, sir, it is.

Mr. Conklin: Your Honor, we offer this as exhibit 10.

The Court: It will be received as exhibit number 10.

(The document referred to was received in evidence as Plaintiff's exhibit number 10.)

Q. (By Mr. Conklin): Mr. Ranieri, referring to [26] exhibit 10, I show you a check dated May 14th drawn on the U. S. National Bank, Denver, Colorado, and ask you, is that the check you deposited as shown on exhibit 10? (Showing a document to the witness.)

A. Yes, sir, it is.

Mr. Conklin: Your Honor, we offer this check which is dated May 14th and in the sum of \$50,000 as exhibit number 11.

(Testimony of Dominick S. Ranieri.)

The Court: There being no objection, it will be received as exhibit number 11.

(The document referred to was received in evidence as Plaintiff's exhibit number 11.)

Mr. Conklin: No further questions, your Honor.

The Court: Cross examination?

### Cross Examination

Q. (By Mr. O'Neill): Mr. Ranieri, you were the office manager of Petroleum Corporation of America, is that correct? A. Yes, sir.

Q. Now, what was the usual procedure or the method of depositing money in the Bank of Hawaii?

A. Well, you mean the money that came in from the investors or any money at all?

Q. I can't hear you.

A. The money that was brought in by investors or [27] any money at all? Well, from time to time Mr. Williams would give me instructions as to which account to make a deposit to. I would proceed when he came in or checks came in to make deposits and I would advise him at times by letter, sending a list of deposits made on a certain date. Sometimes by telephone when he would call or I would call him. At other times by telegram where I would wire at the end of the day that I made so many deposits to a certain account, that I made so many dollars, so many deposits to a certain account that particular date.

Q. This was the normal course of business that

(Testimony of Dominick S. Ranieri.)

you would collect the money, you would make the deposits, and then advise the Denver office, is that correct?      A. That's correct.

Q. And the Petroleum Corporation of America did have an account in Denver and maintained an office there, is that right?      A. Yes, sir.

Q. Now, at the time that Mr. Williams instructed you to make these deposits or anything of that type, did he tell you anything else in regard to it? When you drew these checks on the Seattle Bank, these checks that were referred to here, I believe you were shown those checks by the United States Attorney, these checks from the Seattle Bank, and did then Mr. Williams say anything to you at the time? [28]      A. Yes.

Q. Would you relate what that was, please?

A. Pardon?

Q. What did he tell you at the time?

A. He had started an operation in Seattle where he was selling interests, I believe, similar to what is set up here, to people there. And as the money would be deposited there by his—we had a manager up there—Mr. Dewey or something like that—I never did meet him——

Q. Would you speak up?

A. The procedure was the same as here, as my understanding. That is the reason why he would ask me to complete checks on the Seattle Bank for deposit here. And my understanding of the reason for that procedure, which made sense, was the fact that in business it is better if your competitors don't

(Testimony of Dominick S. Ranieri.)

know where you have your source of investment money. That is as I understand the reason for the checks being from the Seattle deposit bank.

Q. Mr. Williams did tell you at the time that you made these Bank of Hawaii deposits that interests had been sold and there was money in the Seattle bank, is that right?      A. Yes, sir.

Q. And that he had been told by his manager up there that these interests had been sold?

A. Yes, sir. [29]

Q. And the money was being deposited by the Seattle man?      A. Yes, sir.

Q. In other words, the same situation here, that if you would collect money you would deposit it here, is that right?      A. That's right.

Q. And you would advise Mr. Williams in Denver or wherever he happened to be at the time?

A. Yes, sir.

Q. As to the amount of deposits?

A. Yes, sir.

Mr. O'Neill: That's all.

The Court: Redirect?

#### Redirect Examination

Q. (By Mr. Conklin): With regard to these various checks referred to on cross examination, Mr. Ranieri, and as you have previously identified either through deposit slips or the actual checks themselves, how did you receive those checks for deposit?

A. The checks that are there in evidence were

(Testimony of Dominick S. Ranieri.)

signed in blank by Mr. Williams and left with me here. And on his instructions by telephone I would complete one of those checks and in some cases have to alter a check, say, Bank [30] of Hawaii check, and type in First National Bank of Denver or whatever it was, and made deposit as per his instructions.

Mr. Conklin: No further questions, your Honor.

The Court: Recross, Mr. O'Neill?

Mr. O'Neill: We have no further questions.

The Court: You may step down, Mr. Ranieri.

(Witness excused.)

The Court: Call your next witness.

Mr. Conklin: Mr. C. R. Klenske.

### CARL R. KLENKE

a witness called by the Plaintiff, being duly sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Conklin): Would you state your name, please, sir?

A. Carl R. Klenske, K-l-e-n-s-k-e.

Q. And where do you live, Mr. Klenske?

A. 1547 Ala Wai, Honolulu.

Q. And where are you employed?

A. Bank of Hawaii.

Q. And what is your position at the Bank of Hawaii?

A. Assistant Vice President in charge of operations of the head office.

(Testimony of Carl R. Klenske.)

Q. And how long have you been employed at the Bank of Hawaii? [31]

A. 11 years, approximately.

Q. And where had you been employed prior to that?

A. Security First National Bank in Los Angeles.

Q. And how long have you been employed there?

A. A year there.

Q. And where had you worked prior to that?

A. Prior to the war, the First National Bank in Philadelphia for approximately 10 years.

Q. So that your banking experience in three banks totals about 22 years?

A. Approximately.

Q. 10, 1 and 11?           A. That's it.

Q. Mr. Klenske, do you know what the term kiting is?

Mr. O'Neill: Just a minute, your Honor. We object to that. There is no proper foundation that has been made for such a question as that, asking a witness to speculate on some definition which, if anything, is going to be a matter of law for the Court.

The Court: Objection sustained.

Q. (By Mr. Conklin): Mr. Klenske, can you describe your job at the Bank of Hawaii with regard to the word you used, "operations"?

A. Yes. The function of operations is to administer the systems, the methods, the personnel. In other words, [32] to run the bank in all phases of its activities except the actual making of loans, they



(Testimony of Carl R. Klenske.)

being two specialized fields. And in that capacity, I might add, that all matters in reference to book-keeping or customer accounts, loan records, control are my responsibility.

Q. Now, Mr. Klenske, are you familiar with the Bank of Hawaii requirements for the operating of corporate checking accounts? A. Yes, I am.

Q. And what is that procedure?

A. We first require a resolution. And a resolution means an extract from the minutes of the corporate board meeting reciting that the account should be opened in a designated bank; certified officers are authorized to sign and to designate the number of those officers, whether it be one or two. And, of course, most important then, money is deposited in an account and an account is then opened. Then this gives the corporate officers then the right to draw in accordance with the resolution against the funds on deposit.

Q. Showing you Plaintiff's exhibit number 1, Mr. Klenske,—and you will notice there is something on the other side—— A. Yes.

Q. —will you explain to the jury what that exhibit [33] is? (Handing document to the witness.)

A. This is a signature card for the Petroleum Corporation of America authorizing any one of three officers to sign. On the reverse under corporate seal is the resolution resolving that the account be opened at the Bank of Hawaii and resolving—this being an extract from the minutes of the board of directors meeting—resolving that until further



(Testimony of Carl R. Klenske.)

notice these instructions shall remain in full force and effect. And then certifying that this is a true extract.

Q. Now, Mr. Klenske, are you familiar with the Bank of Hawaii requirements for the opening of individual checking accounts? A. I am.

Q. And what is that requirement and procedure?

A. Well, that, of course, differs from the corporation set-up since that is an elective thing by an individual. The only signature requirement is that of identification. We must be certain that the individual who is opening an account is who they say they are. And, of course, again that they put on deposit money. That is, good funds on which they intend to draw checks.

Q. Showing you Plaintiff's exhibit number 2, Mr. Klenske, will you please explain what that exhibit is to the jury? (Handing document to the witness.)

A. This is an individual checking account signed [34] by Mr. B. A. Williams, showing an address of 360 Alexander Building, Alexander Young Building. And there are a series of notations to indicate the type of identification, by whom introduced, and so forth.

Q. And this signature card relates to what bank?

A. The Bank of Hawaii.

Q. Now, Mr. Klenske, are you familiar with Bank of Hawaii procedures with regard to checks drawn on banks outside of the Territory of Hawaii

(Testimony of Carl R. Klenske.)

but deposited in Bank of Hawaii accounts? Are you familiar with them?      A. Yes, I am.

Q. Would you explain what that procedure is?

A. Well, at the time of deposit, when a deposit is received, it is sent through what we call our transit department for processing, which merely means for processing, which merely means that in order to check, in order to collect a check, you have got to send the check to the Bank on which it is drawn, the check being of absolutely no value until it is collected. We take checks in groups. We send these checks in the case of mainland items, which is what the attorney asks, to the mainland for collection. And when there are large sums involved, the banks because they frankly refuse a central bank to clear a lot of small items will send large checks direct to the bank on which it is drawn in order to speed up the time involved in getting it there. [35] Since obviously if you deposit a check today, it wouldn't get to the mainland for several days and be collected, and we here in Hawaii don't have the use of the money until it is collected. So it is floating. In practice, we, of course, when we send these checks to the mainland banks for collection, are advised that they were received and that we have payment or that they were paid or that they weren't paid and they will be returned to us. And that is the practice that is common to all banks, not just ours.

Q. And are you familiar with the procedure that is carried on within the Bank of Hawaii with regard to such out-of-town checks?

(Testimony of Carl R. Klenske.)

A. Yes, I am familiar with the practices.

Q. Very well. What I am getting at is this: When, as you have explained, a check drawn on an out-of-town bank, on a mainland bank, is deposited, it goes through your bank and is sent to either a clearing bank or the bank upon which it is drawn, depending on the size. That is correct so far?

A. Yes.

Q. Now, how is that check sent to the mainland?

A. You are referring to the mechanics of the thing?

Q. Yes.

A. Well, yes, we take all of these checks and send [36] them by mail. We have to get them grouped, accumulate totals, dispatch those to what we call our mail department. The mail department then uses one of two methods to send these out in the mail. Either they take them directly to the post-office or they sent it through an armored car. And, of course, they are sent airmail in the interest of time. And always, for that matter, are those checks sent by mail. There is no other way to get them there. We just don't send them any other way. They are the mechanics of the thing. Is that what you have in mind?

Q. Yes. Now, with regard to again the mechanics of the Bank of Hawaii, with regard to such out-of-town checks, are you familiar with any routine which may exist with regard to the receipt of those checks by such mainland banks? And if so, are you——

A. Oh, yes.

(Testimony of Carl R. Klenske.)

Q. And what is that?

A. Well, we are advised that they got there. And if they didn't, we wouldn't get paid. We wouldn't get our money. There's two ways that that comes to pass. We in the banking business expect everything to be predicated in the interests of time, that these accounts for these accumulated sums will be credited as soon as possible since there is the element of interest involved. So we have a system whereby we telegraph automatically if an item is not going to be paid. If it is over a specified sum, which is small— [37] so we get instantaneous advice as to non-payment and we are advised of the receipt through the credit to our account.

Q. Now, with regard to Bank of Hawaii procedures as to the checks, as to the account to which such out-of-town check is deposited, are you familiar with the procedure followed there?

A. Are you referring to the checks, specifically to the checks?

Q. No, just generally. For instance, you have explained what happens to a check drawn on an out-of-town bank when it comes to the Bank of Hawaii.

A. Yes.

Q. How it eventually gets to that bank?

A. Yes.

Q. Now, what I am interested in is what about the account in the Bank of Hawaii which deposited that check?

A. Well, it is necessary that all accounts be subject to scrutiny constantly, particularly those who

(Testimony of Carl R. Klenske.)

are drawing checks on mainland banks. And particularly if the amounts are large. This is what we call standard operating procedure. That is also true in the case of local banks. But with specific reference to the mainland items. There is more time involved in the clearance of mainland items than there is in the clearance of local items. [38] So whenever checks are in large amounts or the balances of those accounts are running large and rising and falling constantly, then we review these accounts to be certain that we are not paying funds against what we call in the banking business uncollected funds, which simply means not good.

Q. Now, with regard, as you say, with regard to the account balances rising and falling, how does such an account receive a balance?

A. Well, whenever these deposits in any account come in,—I think a classic example of that is an individual account—most people deposit their paycheck and by the end of the month they don't have very much left. This is something that I think we are all familiar with. In the case of a corporate balance, one expects a corporate balance to be maintained at a certain level. It shouldn't go below. And in the course of business when these checks are deposited, we know that it takes, for example, in Seattle or in San Francisco or Los Angeles—any West Coast major city—two days we figure, two days time before we can expect credit. And if there are a series of checks coming in to be paid against just that one deposit with no residue balance, noth-



(Testimony of Carl R. Klenske.)

ing over and above, then you have a situation of drawing against uncollected funds. And the bank has every right to refuse payment of those checks presented against that so-called uncollected deposit until we know it has been paid. [39]

Q. Now, with regard to the mechanics of deposit of such checks within the bank, what happens when the check is presented? Is it presented by itself or is there a deposit slip with it or what?

A. All deposits that are made in the bank, of course, are accompanied by the debits, the checks or cash, and what we call a deposit slip, which is the credit. The purpose, of course, of the ticket being to identify that particular deposit so that the individual gets credit to their account. It is the credit ticket that tells the bookkeeper to credit Johnson's account so much money. The items that supported that credit, as I have already indicated, are pulled away and sent on.

Q. In other words, so that the checks go in one direction to be forwarded,— A. Right.

Q. —whereas the deposit slips go in another direction to be credited to the particular account?

A. That is true. Mechanically if you walk—and you all have—up to a teller's window, the teller takes your checks and deposits them. She stamps certain identifying marks upon that deposit ticket. First to identify that it actually went through her cage; secondly, there are other notations made with respect to whether it is a mainland item. For example, the little numbers that you see [40] on the line

(Testimony of Carl R. Klenske.)

indicate the drawee, to the bank of which the check is drawn. And this is typical in banks because we attempt to balance and associate a particular series of deposits with a particular teller. I should say, we don't attempt. We actually do.

Q. Now, you say this procedure with regard to deposit slips is followed with individual accounts. Now, is it also followed with corporate accounts?

A. All accounts.

Q. All accounts?           A. That's correct.

Q. You have mentioned a number on the check. What is that number called?

A. Well, there is a symbol on standard checks that is called a transit number.

Q. Transit number?

A. Transit number. It is the bank's own number. For example, 59102 means the Bank of Hawaii, 59 being Hawaii and 102 being Bank of Hawaii. And each bank has one of these numbers.

Q. Now, calling your attention to April and May of 1958—(Showing a document to Mr. O'Neill)—Mr. Klenske, I wish to show you various deposit slips which were credited to the ledger account of B. A. Williams II and Petroleum Company of America. (Showing some documents to the witness.) [41] Now, do you have in your possession the originals of those ledger sheets?           A. I do.

Q. Would you take them out, please?

A. Yes. (Producing some documents.)

Q. Now, if you would refer to the original of the B. A. Williams II ledger sheet?



(Testimony of Carl R. Klenske.)

A. You said April and May?

Q. Yes, of 1958. Now, I hand you a photostatic sheet and ask you, is that a correct copy of it?  
(Handing a document to the witness.)

A. It is.

Mr. Conklin: Your Honor, we offer this as exhibit 12.

The Court: There being no objection, it will be received as exhibit number 12.

(The document referred to was received in evidence as Plaintiff's exhibit No. 12.)

The Court: That is the ledger sheet of B. A. Williams II?

Mr. Conklin: Yes, your Honor.

The Court: Covering the months of April and May, 1958?

Mr. Conklin: It goes back a little further than [42] that but it does cover that period.

The Court: That will be exhibit number 12. Is this a convenient place to interrupt your examination?

Mr. Conklin: Yes, your Honor.

The Court: Ladies and gentlemen of the jury, again before excusing you, you are instructed not to discuss this case with anyone, allow no one to discuss it with you, avoid reading or hearing anything about it and form no opinions about it. You are excused until 1:30 this afternoon. The Court will recess until 1:30.

(The Court recessed at 12:00 o'clock noon.)

(Testimony of Carl R. Klenske.)

Afternoon Session

(The trial resumed at 1:30 p.m.)

The Court: Let the record show that the jury is present, the Defendant and his counsel. Proceed, Mr. Conklin.

Q. (By Mr. Conklin): Mr. Klenske, do you have the original of the Bank of Hawaii ledger sheet for the Petroleum Corporation of America showing the ledger balances for the months of April and May, 1958? A. I do.

Q. You do? I hand you a document purporting to be a photostat of that and I ask you, is it a correct copy of the original itself up to the date of May 15th? (Showing document to Mr. O'Neill and then to the witness.) Mr. Klenske, do you have a copy of this ledger sheet showing the entire transactions of that particular page of the original?

A. I do.

Q. And this was prepared by you?

A. It was.

Q. So that you could keep the original, is that the idea? A. That's right.

Mr. Conklin: Your Honor, we would offer this in evidence as exhibit—— [44]

The Court: It will be received as exhibit number 13.

(The document referred to was received in evidence as Plaintiff's exhibit No. 13.)

Q. (By Mr. Conklin): Mr. Klenske, I show you

(Testimony of Carl R. Klenske.)

the original of a Bank of Hawaii deposit slip and I ask you, is that the original of a deposit slip made for Petroleum Corporation on April 25, 1958? (Handing a document to the witness.)

A. No, that is an original of a deposit ticket made to the account of B. A. Williams II, totaling \$44,000 consisting of two items.

Q. What is the answer?

A. It is an original of a deposit ticket to the account of B. A. Williams II of two items totaling \$44,000.

Q. On what date?

A. Dated April 25, 1958.

Q. And is this a true photostatic copy of it?

A. It is.

Mr. Conklin: Your Honor, we offer the photostatic copy in evidence.

The Court: There being no objection, it will be received as exhibit number 14.

(The document referred to was received in evidence as Plaintiff's exhibit number 14.) [45]

Q. (By Mr. Conklin): Mr. Klenske, showing you Plaintiff's exhibit number 12, being the ledger sheet of B. A. Williams II, would you indicate, if you could, so that the jury can see it what the various columns represent? (Handing document to the witness.)

A. Well, the columns on the right are the balances. And there is a date column to which these balances——

(Testimony of Carl R. Klenske.)

The Court: Just a minute. Can you turn around a little bit more?

The Witness: Yes. I will stand.

A. (Continuing) This column is a series of balances. (Indicating on exhibit.) This column is a series of dates to which these balances refer. This column is a series of deposits. The next three columns are checks drawn against these balances. And then this column are the pick-up balances from the preceding day. (Indicating on document.) The book-keeper inserts the present balance and that repeats over on the extreme left.

Mr. Conklin: May the record indicate that the witness has proceeded from the right hand side of the page, referring to certain columns, referring to vertical columns, and in his description has gone to the left?

The Court: The record will so show.

Q. In other words, Mr. Klenske, if you could hold that up so the jury can see that again—in other words, [46] the column on the far right refers to the balance on the day shown in the column second to the right? A. That is correct.

Q. So that while you have described the columns in a vertical manner, describing the columns, if one is to read the ledger, you are reading it horizontally, is that correct? A. That is correct.

Q. Now, showing you Plaintiff's exhibit number 13, Mr. Klenske, and referring you to the cash balance entries for May 15th and May 20th, on the extreme right of those balances are indicated some

(Testimony of Carl R. Klenske.)

letters. Could you state what those letters are and what they indicate, if anything?

A. Yes. On May 15th besides the total representing the balance are the initials or letters "O.D." which stand for overdrawn. And on May 20th there again appears beside the balance column, namely, \$50,697.55, the letters "O.D.," overdrawn.

Q. And would you explain what you mean when you use the word "overdrawn"?

A. Yes. The ordinary customer has money in the bank, and that appears in what we call a credit balance. When you have used up all your money, it is zero. When you have used more than what you have in the bank, you are overdrawn. And there are times when banks arrange with [47] customers to cover small over-drafts, a service charge, and that sort of thing.

Q. And was such an arrangement with the Petroleum Corporation of America in the Bank of Hawaii?

A. No, there was not.

Q. Was there such an arrangement with B. A. Williams II in the Bank of Hawaii?

A. No, there was not.

Q. Showing you again Plaintiff's exhibit number 13 and asking you to refer to that, what was the balance shown for Petroleum Corporation of America on April 30, 1958?

A. \$10.65.

Q. And what was the balance shown for the Petroleum Corporation of America on that same ledger sheet, exhibit 13, on May 6th, 1958?

A. \$510.65.



(Testimony of Carl R. Klenske.)

Q. Showing you a check drawn on the Bank of Hawaii dated April 27, 1958, payable to the Petroleum Corporation of America in the sum of \$18,000 and drawn by the Petroleum Corporation of America, I ask you, have you seen that check before? (Showing document to the witness.)

A. Yes, I have seen the check before. It was among the cancelled vouchers, cancelled checks that were delivered to me from the bookkeeping department in connection with this account. The reason it was delivered is because it is [48] an over-draft, an over-draft was reported. As a consequence of a return of the two checks from Seattle.

Q. And the maker of the check as indicated as being who?

A. Petroleum Corporation of America, signed by B. A. Williams.

Mr. Conklin: Your Honor, we offer this as exhibit 15.

The Court: There being no objection, it will be received as exhibit number 15.

(The document referred to was received in evidence as Plaintiff's exhibit number 15.)

Mr. O'Neill: What is the date?

Mr. Conklin: The 27th of April.

Q. (By Mr. Conklin): Showing you a similar check, Mr. Klenske, dated April 27, 1958, drawn on the Bank of Hawaii with the same date, same payee, same drawer, and being in the amount of \$27,000, I ask you, have you seen that check before? (Showing a document to the witness.)

(Testimony of Carl R. Klenske.)

A. I have.

Q. And under what circumstance?

A. Identical circumstance that I have just recited.

Mr. Conklin: Your Honor, we offer this as exhibit——

The Court: What was the amount of that check? [49]

Mr. Conklin: \$27,000, your Honor.

The Court: It will be received as exhibit number 16.

(The document referred to was received in evidence as Plaintiff's exhibit number 16.)

Q. (By Mr. Conklin): Showing you a like check dated May 5 with the same payee and the same drawer and being in the amount of \$25,000, I ask you, have you seen that check before? (Showing a document to the witness.)

A. I have.

Q. Under what circumstance?

A. The same as before, identical circumstance.

Q. I show you another check dated May 6, 1958, the same payee, the same drawer, drawn on the Bank of Hawaii, being in the amount of \$15,000, and I ask you, have you seen that check before? (Showing a document to the witness.)

A. I have, and under the same circumstance.

Q. I show you a check drawn on the Bank of Hawaii, May 7, 1958, with the same payee and the same drawer, and being in the amount of \$6,200, and I ask you, have you seen that check before? (Showing a document to the witness.)



(Testimony of Carl R. Klenske.)

A. I have and under identical circumstance.

Mr. Conklin: Your Honor, we offer the check dated May 5, 1958, as exhibit 17.

The Court: It will be received as exhibit number 17. [50]

(The document referred to was received in evidence as Plaintiff's exhibit number 17.)

Mr. Conklin: Your Honor, we offer the check dated May 6, 1958, as exhibit 18.

The Court: What is the amount of that?

Mr. Conklin: \$15,000.

The Court: That will be received as exhibit number 18.

(The document referred to was received in evidence as Plaintiff's exhibit number 18.)

Mr. Conklin: Your Honor, we offer the check dated May 7, 1958, in the amount of \$6,200, as exhibit number 19.

The Court: That will be received as exhibit number 19.

(The document referred to was received in evidence as Plaintiff's exhibit number 19.)

Q. (By Mr. Conklin): Mr. Klenske, showing you Plaintiff's exhibit number 15, I ask you, is it possible to determine from the check where that check was deposited? A. Yes.

Q. Is the place of deposit indicated on the check?

A. It is indicated by an endorsement stamp which all banks place on the back.

Q. What is that endorsement stamp? [51]

(Testimony of Carl R. Klenske.)

A. Seattle First National Bank, Seattle, Washington.

Q. Would you hold it up and indicate the endorsement stamp to the jury so that they can see it?

A. The blue in this area right here is the endorsement stamp of Seattle First National Bank, Seattle, Washington, the date line and then an endorsement guaranteeing all prior endorsements. (Indicating.)

Q. And what is the red stamp?

A. That is the Bank of Hawaii stamp. Upon receipt we in turn endorse as they go through to be posted to the account.

Q. When you say "posted to the account," you mean by that what?

A. Debited to the customer's account.

Q. And I show you Plaintiff's exhibit number 16 and I ask you, does the place of deposit of the check show on that exhibit?

A. Yes, it does.

Q. And what is that place of deposit?

A. The same stamp as heretofore described, Seattle First National Bank, identical blue block.

Q. And showing you Plaintiff's exhibit number 17, does the place of deposit appear on that check? (Showing a document to the witness.)

A. It is on this check but it is much fainter. You [52] have to look at it very carefully to see the impression in here. And that is Seattle First National Bank, Seattle, Washington.

Q. And likewise I show you Plaintiff's exhibit number 18 and ask you, does the place of deposit

(Testimony of Carl R. Klenske.)

of that check appear on the check? (Showing document to the witness.)

A. Yes, Seattle First National Bank, Seattle, Washington.

Q. And showing you Plaintiff's exhibit number 19, I ask you, does the place of deposit of that check appear on it? (Showing document to the witness.)

A. Yes, it does, Seattle First National Bank.

Q. And when you say Seattle First National Bank, you are referring to the endorsement stamps that appear as you have indicated to the jury on the back of the check? A. That is correct.

Q. Now, those exhibits I have just shown you, Mr. Klenske, and which you just identified, do you know how those checks were received by the Bank of Hawaii?

A. Oh, yes. They were received in what we call the cash letter, which is nothing more than another way of describing a deposit made by that bank with us. These various and sundry checks that are sent from one bank to another are listed on a sheet of paper about so big to reach a total, and on that sheet of paper there are [53] instructions as to what to do with the money because banks have relations with other banks. (Indicating.) Some have accounts with banks; some have accounts with other banks. And in these so-called cash letters these instructions will tell the bank on whom all these checks are drawn, how to credit the sending bank, how to pay the sending bank for the total of the checks. Maybe by check, maybe by credit to an

(Testimony of Carl R. Klenske.)

account. The bank keeps that with that drawee's bank. It may be by remitting to another bank for the credit of the sending bank.

Q. Now, you refer to a cash letter. How is that cash letter received by the Bank of Hawaii?

A. That is received by mail again. There just isn't any other way of getting checks from the mainland to here.

Q. Were these particular checks,—referring to the exhibits I have just shown you, being numbers 15 through 19 inclusive—were they received in such fashion through the mail?

A. Yes, they were. As a matter of fact, we use an identifying code on all cash letters received as a part of control and auditing purposes. You will find on the reverse of each check either CCL or CL with a number and a date. That CCL refers to a cash letter. The number refers to the sending bank and the date, of course, refers to the date. [54]

Q. You are referring to this stamp that is on the back of the particular exhibit?

A. That's right.

Q. 17?

A. CCL 14 and May 7th, CCL 14, May 9th; 14 meaning a code number for the Seattle National Bank and CCL means the cash letter received on May 9th.

Q. Showing you Plaintiff's exhibit 12 and Plaintiff's exhibit 14, exhibit 12 being the ledger sheet for B. A. Williams II, and exhibit 14 being the Bank of Hawaii deposit slip to the account of B. A.

(Testimony of Carl R. Klenske.)

Williams II, dated April 25, 1958, I ask you to compare those two, and I ask you on April 25, 1958, was that ledger sheet, the account, does a credit appear on the ledger sheet crediting that account with the sum of money shown on the deposit slip? (Handing documents to the witness.)

A. Yes, April 25 in the third column I mentioned being the deposit column, there is the entry \$44,000. That is April 25. And showing a balance of \$39, 130.26. And this is the deposit ticket showing the same date.

Q. Again, by way of a random sample, I ask you to compare Plaintiff's exhibit number 13, being the ledger sheet for the Petroleum Corporation of America, with Plaintiff's exhibit number 8, being a deposit slip to the Petroleum Corporation of America dated May 12, and I [55] ask you, does the amount indicated by the deposit slip appear on the ledger sheet as a credit on that day? (Handing document to the witness.)

A. Yes, it does, right here, May 12. (Indicating.)

Q. The deposit was for how much?

A. \$1,000.

Q. And the credit on the ledger sheet was for——

A. \$1,000, on the 12th, May 12th.

Q. Showing you Plaintiff's exhibit number 11, being a check dated May 14, 1958, drawn on the U. S. National Bank, Denver, Colorado, in the sum of \$50,000, I ask you, Mr. Klenske, have you seen



(Testimony of Carl R. Klenske.)

that check before? (Handing document to the witness.) A. Yes, I have.

Q. Would you explain, please, when, where and under what circumstance?

A. Well, this check was presented for deposit by Mr. Ranieri, the date being right under that, May 14th, and because there was then in existence an over-draft in excess of \$50,000, Mr. Ranieri brought this check in presumably to cover that over-draft, since we had received a telegram from the Seattle Bank advising us that two checks in the amount of \$25,000 each were not paid. And we had, of course, paid items against that particular fictional balance. [56] Then this was tendered in payment of this over-draft. So rather than send it through regular deposit channels, which as I explained earlier takes some time, in this particular case in Denver of the inside three days, I sent this direct, and that is a way banks employ, as I previously mentioned, that we can send a check direct to the bank on which the check is drawn and in that sending, which is a letter again, instruct the bank to whom to pay the proceeds for our credit. And I actually instructed our collection manager to handle this check in that fashion. And at the same time I sent a wire to the Denver Bank asking if the account was good for that amount. And I received a reply some time later in the afternoon—I don't remember the time—telling me no, not at present. Well, that is commonplace, too, in banks. If an account is not good at the moment, at the moment

(Testimony of Carl R. Klenske.)

the wire is received, they will tell you so. But that doesn't mean that perhaps by the time the check gets there, which means over night, by airmail, and in this particular case perhaps even two days, that funds wouldn't be there to meet the check when it arrives because the check cannot be paid until it is physically presented to the paying bank.

And so those were the circumstances under which I learned of this check. Well, after that, of course, we received again in the course of common banking practice, [57] when the Denver Bank had received this check, they wired non-payment, and we had as a matter of fact asked them to wire FATE, the fate of an item. It is another way of saying, tell me whether it is paid or not paid? If you just say "wire, non-payment," that is all they will do. They will wire if it is not paid. In this case I wanted to know whether it was or was not paid. So I received a wire advising that it was not paid and it would be returned. That is the story on that check.

Q. Again showing you the check which you had just had, being exhibit number 11, and also showing you exhibit number 9, being a check dated May 12th for \$1,000 on the U. S. National Bank of Denver, and likewise showing you Plaintiff's exhibit number 8, being the deposit slip that goes with that \$1,000 check, and showing you Plaintiff's exhibit number 10, being the deposit slip that goes with the \$50,000 check, I ask you, was the deposit amount as shown by exhibit 8 credited on the ledger sheet for Petroleum Corporation of America, which you



(Testimony of Carl R. Klenske.)

have in your hand? (Handing documents to the witness)      A. Exhibit 8 being the \$1,000?

Q. \$1,000 deposit slip.

A. Yes, it is shown on the ledger under date of May 12th?

Q. Now, how about the deposit slip for May 14th? [58]      A. It is not shown.

Q. Why not?

A. It is not shown because I told you I made a special collection item of it. And we were not going to add credit to this account to wipe out an existing over-draft because we wanted to be sure that the check would be good. Now, as I have already testified, in the afternoon we got a wire telling us that it was not good. And the following day we got a wire telling us that the check had not been paid. And in the handling of collection items, we never give immediate credit. That is the purpose in handling it especially in this fashion. So the credit will not appear on the ledger sheet.

Q. And you say you had not given credit for this \$50,000 check because you had received notice the day before from the Seattle Bank?

A. That is right. No, not the day before. Let me see. It is my recollection that the wire from the Seattle Bank was about—I don't recall—I can check. I think it was the 13th. (Examining some papers.) That's right, the day before the 13th was the day that the Seattle Bank had wired us non-payment on the two \$25,000 items.

(Testimony of Carl R. Klenske.)

Q. Are you acquainted with the Defendant, Mr. B. A. Williams II?

A. I had met Mr. Williams. [59]

Q. Have you had conversations with him?

A. I had.

Q. Could you tell the jury under what circumstance?

A. I met Mr. Williams on, I think it was, June 16th. That is several days after he had arrived here.

The Court: What year?

The Witness: 1958. I had been in contact with Mr. Williams through Mr. Ranieri over this situation and had been assured that Mr. Williams was going to visit the city. And he did in fact turn up, as I said, I think it is the 16th of June in the morning. And we then discussed this matter. And he had assured me that he was doing everything possible to cover this over-draft.

The Court: And instead of saying "assured," would you give what you said and what he said, as best you can remember? Where did this conversation take place and who else was present, if anyone?

The Witness: He came to the bank at my desk on the main banking floor. And we discussed the matter of covering this over-draft. I asked him specifically what he was going to do about it, and he assured me that he intended to take it up. And at that time he told me that he was about to sell some oil leases through a firm—well, I don't remember the name of the firm. I have it in my rec-

(Testimony of Carl R. Klenske.)

ords. But in any event, we then got into a [60] conversation about the legality of assigning these leases or assigning the proceeds of the leases, since this was a corporation. I asked him if he had the right. He assured me he did. I asked him if the sum of money would be adequate to cover this. I recall he said that, yes, there was approximately \$150,000 worth of leases, some of which were wild-cat and some of which were in another field. I don't particularly recall any reference to specific leases as such, however. But most of the conversation centered around this lease business. So because of the legal question I asked Mr. Williams if he could meet with me that same afternoon or in the presence of our attorneys to investigate this particular problem. And he said, yes, he would be glad to. And he did. The only person present at that conversation——

Q. (By Mr. Conklin): Which conversation, now, in the morning?

A. This morning conversation. Well, my secretary is always right there. That's the only person that was there.

Q. And did Mr. Williams meet with you in the afternoon?           A. He did.

Q. And what was the conversation at that time?

A. Well, since our attorney, Mr. Kidwell, hadn't arrived, we then went into this matter of the overdraft. [61] At that time I specifically asked him if this situation had come to pass by intent. As a matter of fact, I think my very words were, "you

(Testimony of Carl R. Klenske.)

know you were kiting.” And he answered and said, yes, but it didn’t start out that way.

Q. Well, when you used the word, you said to him “you knew you were kiting,” and what did you mean by the use of that word as you used it to him?

A. Well, that is a practice, that is a term used to define a practice of creating fictitious balances by drawing against uncollected funds. And it must of necessity involve two or more banks and it must involve two or more people, although one person can carry a thing on by very careful maneuvering, by mailing back and forth. But the trick is that you must deposit in two banks and then draw against those funds.

Q. Now, Mr. Klenske, showing you various deposit slips, being Plaintiff’s exhibit number 14, which is a slip dated April 25, then the deposit slip dated May 2nd, which is exhibit number 3, a deposit slip dated May 7th, which is number 4, a deposit slip dated May 8th, which is number 6, and a deposit slip which is dated May 12th, which is number 8, a deposit slip dated May 14, which is number 10, showing those deposit slips to you, I ask you, do you know of your own knowledge that the checks represented by those deposit slips—you have already testified that all checks drawn on out-of-state [62] banks are sent by the Bank of Hawaii through the mail—do you know whether it is to a correspondent bank or directly by special handling or whatever the term was? You have already testified to that. My question relates to this: As to the checks shown on those deposit slips, not generally, but those, did the

(Testimony of Carl R. Klenske.)

Bank of Hawaii receive notification that those checks had been received by the specific banks upon which they were drawn?

A. In the case of the April 25th for \$44,000, yes, it was paid. In the case of May 2nd, 1958, for \$45,500, yes, it was paid. In the case of May 7th, 1958, for \$25,000, yes, it was not paid. We were so advised by telegram in that case. In the case of May 8th, 1958, \$25,000, yes, because it was not paid. And again by telegram. In the case of May 12, 1958, yes, because it was not paid and we were again advised by telegram. And in the case of May 14, 1958, \$50,000, yes. And I have already explained why.

Mr. Conklin: No further questions, your Honor.

The Court: Cross examination, Mr. O'Neill?

### Cross Examination

Q. (By Mr. O'Neill): Mr. Klenske, you talk about a practice between banks of notifying one another when these funds are in transit, is that correct, when funds are floating back and forth across the country, that notification is given between banks. [63]

A. I don't think I said that. I don't follow you.

Q. Well, when you send funds such as in this case, in this particular case, say from Denver or from Hawaii, you would send it normally to the Wells Fargo Bank in San Francisco, is that right?

A. Yes, that is right.

Q. Now, then, you could also, or part of that,



(Testimony of Carl R. Klenske.)

you could notify, say the Wells Fargo Bank to credit your account in Philadelphia, is that right?

A. That's right.

Q. And then you could—this bank here, say, the Bank of Hawaii, could draw funds against that bank in Philadelphia, is that right?

A. That's right.

Q. And if, say, that you had notified on, say, this morning, that the Bank of Hawaii notified the Wells Fargo Bank in San Francisco to deposit so much money or credit so much money to the Bank of Hawaii account in Philadelphia, then you would immediately commence drawing against that account if you wanted to pay something else on the east coast, isn't that right? A. We could.

Q. And if you failed to get that in time, failed to get it or they failed to get the notification to the bank in Philadelphia, or the Wells Fargo failed to get that to them in a quick amount of time, that is what you mean by [64] kiting, isn't it, back and forth between the banks? That would be the same thing? A. No, it wouldn't.

Q. Drawn against uncollected funds?

A. No, it wouldn't.

Q. Or if there was a failure to make a deposit or failure to give the proper notice?

A. That isn't what I mean by it.

Q. That could happen and that sort of thing can happen?

A. That sort of thing can happen but that is not an arrangement.



(Testimony of Carl R. Klenske.)

Q. In this particular case you say that it is a matter of practice which the bank that you send a notification, as you did here to Denver, asking as to whether or not this \$50,000 item was good. And they made the statement to you, not at present. But what they meant was that you mailed the check and you sent the wire? A. That's right.

Q. So on the day that they received your wire they were making the statement it was not good at that time or not present, that presently the funds were not on deposit? A. That is correct.

Q. That happens quite frequently in the banking business, doesn't it? [65]

A. I won't say it happens quite frequently because if it did you wouldn't have those accounts.

Q. Quite often or it happens?

A. It happens.

Q. All right. In other words, it is a sort of a thing that can happen to anybody in business under certain circumstance? A. That's right.

Q. Now, Mr. Klenske, in connection with this, weren't you kept notified at all times that Mr. Williams was attempting to put the money in the bank in Denver through Mr. Ranieri and others here?

A. Yes, I say that I have been repeatedly told.

Q. They kept you fully advised of it?

A. By Mr. Ranieri, well, solely by Mr. Ranieri but he would quote Mr. Williams since I had not met him, that he was trying to raise the money and it was coming from Seattle or from Denver. That is true.

(Testimony of Carl R. Klenske.)

Q. In other words, they never attempted to keep anything from you? They simply said they didn't have the money at the time but they were desperately trying to get it to cover that check?

A. They told me that they were making every effort to cover that check, that is true. [66]

Q. Now, on this over-draft that we have been talking about here in the Bank of Hawaii, were checks drawn against that by Petroleum Corporation of America, against these deposits of funds?

A. Yes.

Q. Was any of that money received by Mr. Williams?

A. That I really can't say. There were checks paid against it that weren't payable to Mr. Williams.

Q. There were checks drawn against that?

A. The great proportion of that.

Q. But none of them payable to Mr. Williams?

A. I would hesitate to say. I don't know.

Q. Could you check that?

A. I would have to check it. I might add that that would become somewhat difficult to determine since we would have difficulty in knowing at what point anything was paid out of this that may relate or may not relate to that \$50,000, or something that had been in the account prior thereto.

Q. But you have a list?

A. Yes, I have a list of said checks, yes. For example, there is a check paid for \$27,520.09 on the 14th of April to Jim Green. There is a check for

(Testimony of Carl R. Klenske.)

\$1,100 on the 17th payable to K. & B. Wells Services. A check for \$5,000, April 21, 1958, payable to T. N. Jordan. There is a check [67] for \$650 of April 25th, payable to B. A. Williams. This was endorsed for deposit to the account of Byron A. Williams of Commerce Trust, Kansas City.

Q. Do you know whether or not that is Mr. Williams' father who is now dead?

A. I had been told that is so. Then there was a \$7,500 check dated May 2nd which was divided as follows—and this was done by wire—\$1,000 to Mr. B. A. Williams; \$1,500, U. S. National Bank of Denver, deposited to the account of the Petroleum Corporation; \$5,000 to Fred B. Wallace at Borger, Texas; \$500 to Janoil Corporation, that is, May 5th, the date of that one. That is substantially what I know of those particular checks.

Q. Now, also during this period of time didn't Mr. Williams advise you that he would have been in Honolulu earlier except for the death of his father in Oklahoma right around the first of June?

A. He did indeed say that.

Q. And that was the reason that delayed him in getting here to take care of this?

A. Yes, that is what I was told.

Q. Also didn't he send funds or authorize funds from his personal account to be applied against this over-draft? We will put it this way: weren't funds from his personal account applied against this over-draft? [68]

(Testimony of Carl R. Klenske.)

A. Yes. The balance that existed in the personal account was applied to this over-draft.

Q. And just so that we are completely clear, Mr. Williams did come in in June of 1958 and paid this over-draft in full, didn't he?

A. Well, no, he didn't.

Q. The money was credited to his account, is that right?

A. A group of investors paid it off in June.

Q. June 25th? A. June 26th.

Q. 26th? A. Yes.

Q. In other words, the bank has been reimbursed in full? A. In full, that is correct.

Q. There is not one cent owing from Mr. Williams to the bank at this time except some attorney's fees?

A. Well, small attorneys' fees, that's right.

Q. But other than that, the over-draft has been paid in full as far as the bank is concerned?

A. That is correct.

Q. Restitution has been made completely, in full? A. That is correct.

Q. And the first time Mr. Williams talked to you [69] about that in Honolulu, I believe you stated that was June 16th in your office in the Bank of Hawaii, and you mentioned this check-kiting thing to him and he stated that it never was intended to be that way and it never started out that way?

A. That is what his statement was, yes.

Q. Did he tell you that he was relying upon what

(Testimony of Carl R. Klenske.)

had been told him by his office manager in Seattle, that interests had been sold, that the Petroleum Corporation of America had sold their working interest in these wells and that money was being deposited to that bank in Seattle?

A. No, but he told me that he had expected to receive money in the Seattle operation, I think is the way he referred to it, and that it hadn't come through.

Q. That is why this whole thing got started and he was just attempting to keep it going until he could get the money, sell the leases or do something, is that right?

A. Well, that was the implication, yes.

Q. In other words, there was a completely honest motive behind the whole thing? There was never anything fraudulent or ever intended to be fraudulent when this whole thing started? It was an honest mistake, is that right?

A. Well, I couldn't answer to that.

Mr. Conklin: Your Honor—well, it has already [70] been answered.

Q. (By Mr. O'Neill): One thing I wanted to clear up. Mr. Klenske, at the time he stated to you in the bank in Honolulu, at the time he stated it, was he intending to pledge to the bank the leases or the proceeds from the sale of leases?

A. He made that offer.

Q. And was he also to assign to you or attempt to assign to you the accounts receivable of the corporation?

(Testimony of Carl R. Klenske.)

A. No. The proceeds on that Dakota operation were to go to the investors here whose dividends hadn't been paid.

Q. In other words, he was going to take care of all of the money, that the oil returns were to be paid to the investors here and these lease sales were to be assigned to the bank as security for this money?

A. That's right.

Mr. O'Neill: Thank you very much. I have no further questions, your Honor.

The Court: Redirect, Mr. Conklin?

#### Redirect Examination

Q. (By Mr. Conklin): You stated on cross examination, Mr. Klenske, that you were kept informed by Mr. Ranieri, who told you what Mr. Williams was saying with regard to trying to raise [71] the money. Now, when was that?

A. Well, that went along obviously from April 14th until June 26th.

Q. You mean April 14th or May 14th?

A. I'm sorry. No. Wait a minute. No, from May 14th to the time we were advised of the overdraft, this became a problem of mine at that instance and was with me until June 26th or 28th.

Q. So that with regard to your being kept advised by Mr. Ranieri and/or Mr. Williams, that commenced with May 14th, is that correct?

A. Yes, it is May, because the two \$25,000 items were returned in May. It is May.

Q. And you first met Mr. Williams in June?



(Testimony of Carl R. Klenske.)

A. That's right. The only word I had on this whole subject was always related through Mr. Ranieri who was most obliging. He would tell me these things. But I was only concerned about one thing: Where was the money and where was it coming from and when?

Mr. Conklin: No further questions.

The Court: Any recross, Mr. O'Neill?

Mr. O'Neill: No, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness. [72]

ROBERT C. H. CHUNG

a witness called by the Plaintiff, being duly sworn, testified as follows:

Mr. Conklin: Your Honor, may we have your indulgence, if we could? There may be a possibility of eliminating this witness.

The Court: To save time, you may have a moment.

Mr. Conklin: Thank you, your Honor.

(Counsel confer.)

The Court: Perhaps we had better start.

Mr. Conklin: Your Honor——

The Court: It looks like we might as well swear the witness and ask him questions.

The Clerk. He has already been sworn.

The Court: What is your name, please?

The Witness: Robert C. H. Chung.

Mr. Conklin: Your Honor forced us into an agreement.

The Court: Very well.

Mr. Conklin: The use of this witness is unnecessary, your Honor, and we will withdraw him with your Honor's permission.

The Court: Very well. You are excused, Mr. Chung.

Mr. Conklin: Thank you very much, Doctor.

And in lieu of the Doctor's testimony, we will stipulate to the introduction of two affidavits, one by the Defendant and one by Warren P. Doing, both of which were executed before a Notary Public in Colorado.

The Court: As to the truth of the contents of the statement?

Mr. Conklin: No, your Honor. I feel—on the part of both sides—that is subject to clarification or impeachment——

The Court: Very well. That is your understanding, that these two documents may be received, Mr. O'Neill?

Mr. O'Neill: That's right, your Honor.

The Court: The first one, that is the affidavit of the Defendant,——

Mr. Conklin: The affidavit of the Defendant.

The Court: ——will be received as exhibit number 20, and the affidavit of Mr. Doing will be received as exhibit number 21.

(The documents referred to were received in evidence as Plaintiff's exhibit numbers 20 and 21.)

PHILIP V. TAGGART

a witness called by the Plaintiff, being duly sworn,  
testified as follows:

Direct Examination

Q. (By Mr. Conklin): Would you state your name, please?

A. Philip V. Taggart, T-a-g-g-a-r-t.

Q. And where do you reside, Mr. Taggart?

A. Seattle, Washington.

Q. And where are you employed?

A. Seattle First National Bank.

Q. How long have you been employed there?

A. Approximately 30 years.

Q. What is your position with that bank?

A. I am Assistant Vice President of the bank.

Q. Are you familiar with the operation of that bank, its operation? A. I am.

Q. Would you explain what the procedure is followed by the Seattle First National Bank with regard to deposits of checks drawn on banks outside of Seattle?

A. Would you restate that, please?

Q. Are you familiar with the procedure followed by the Seattle First National Bank with regard to checks deposited in the bank drawn on banks outside of Seattle? Are you familiar with the procedure? A. Yes.

Q. And what is that procedure?

A. Well, when a check is drawn on an out-of-town point—I am speaking of a larger amount——

(Testimony of Philip V. Taggart.)

The Court: Just a moment, Mr. Taggart. You will have to keep your voice up.

The Witness: Yes, sir.

A. (Continuing) A depositor comes in to make a deposit with an out-of-town check. If it is a sizeable check, it is scrutinized and if it is deposited by a customer that we are not too well-acquainted with, why, it will have to go to an official of the bank for OK for immediate credit. Otherwise we will hold the check until—we will not pay against the check until the funds are collected.

Q. What is the mechanical procedure within the bank, is the purpose of my question, with regard to such check deposits?

A. Well, the check would go through our transit department and mailed out to the bank in which it is drawn.

Q. And is there any other part of the procedure, mechanical procedure in the bank?

A. Well, it would be—the deposit slip would go through and if there was a hold on the funds until the check was collected, that notation would be made to that effect until we found out that the check had been paid.

Q. Well, what way do you mean the deposit slip would go through?

A. To the customer's account.

Q. Well, would you explain how that process works, [76] please?

A. There would be a notation on the ledger

(Testimony of Philip V. Taggart.)

sheet to the effect that no funds were to be paid against that account until the check was collected.

Q. Well, what I am getting at is, what happens to the deposit slip, as you call it, the deposit slip with regard to the customer's ledger? A. Yes.

Q. What is the relationship between those two?

A. Well, the customer makes the deposit. That goes to the bookkeeper.

Q. What goes to the bookkeeper?

A. The deposit.

Q. Continue.

A. And a note is made to the effect that no funds are to be paid against that deposit until a check has been made.

Q. Mr. Taggart, in April and May of 1958 did Petroleum Corporation of America have an account in the Seattle First National Bank? A. Yes.

Q. And do you have the ledger sheet for that account for the months of April and May of 1958?

A. Yes.

Q. Would you produce it, please? (Witness produces [77] a document.) I ask you to compare your ledger sheet with this one which has been furnished to me by defense counsel. (Handing document to the witness.) I am sure they are going to be the same. A. Yes, that is the same.

Q. And have you compared the two sheets, ledger sheets handed to you by me with the bank's own ledger sheet? A. I have.

Q. And are they exactly the same?

A. Yes.

(Testimony of Philip V. Taggart.)

Mr. Conklin: We will offer these two ledger sheets in evidence, your Honor. The ledger sheet commences with April 22nd, 1958, and on the next page it commences with April 30, 1958. So they probably should be part of one exhibit.

The Court: Were those furnished to you by counsel?

Mr. Conklin: Yes, for the Defendant, your Honor.

The Court: Well, the two sheets will be one exhibit, number 22.

(The documents referred to were received in evidence as Plaintiff's exhibit number 22.) [78]

Q. (By Mr. Conklin): Showing you a photostat of a deposit slip for the Seattle First National Bank, dated April 28, 1958, I ask you, have you seen the original of that deposit slip? (Handing a document to the witness.)

A. I have it here.

Q. You have it in your possession?

A. Yes.

Q. Would you take it out and let's make sure? That is April 28th.

The Court: You have several of those, Mr. Conklin?

Mr. Conklin: Yes, your Honor, I have.

The Court: Supposing you take a short recess and you can examine them, Mr. O'Neill, with Mr. Conklin if they are all accurate. And it will expedite matters.



(Testimony of Philip V. Taggart.)

Ladies and gentlemen of the jury, you will be excused for a 10-minute recess.

(Jury leaves courtroom at 2:50 p.m.)

The Court: How are you doing timewise?

Mr. Conklin: I have one more witness. This witness will be shorter than Mr. Klenske and the next one will be even shorter.

(A recess was taken.)

### After Recess

The Court: The record will show that the jury [79] is present, the Defendant and his counsel. Proceed.

Mr. Conklin: Your Honor, counsel will stipulate to the introduction of four Seattle First National Bank deposit slips.

The Court: Very well. Start with the earlier one and it will be exhibit number 23.

Mr. Conklin: Exhibit number 23 would be dated April 28. And exhibit 24——

Mr. O'Neill: What is the amount of that?

The Clerk: \$45,000.

(The document referred to was received in evidence as Plaintiff's exhibit number 23.)

Mr. Conklin: Exhibit 24 is dated May 5 and is in the amount of \$25,000.

(The document referred to was received in evidence as Plaintiff's exhibit number 24.)

Mr. Conklin: Exhibit 25 is dated May 6th and is in the amount of \$15,000.

(Testimony of Philip V. Taggart.)

(The document referred to was received in evidence as Plaintiff's exhibit number 25.)

Mr. Conklin: And exhibit 26 is dated May 7th, 1958, and is in the sum of \$6,200.

(The document referred to was received in evidence as Plaintiff's exhibit number 26.)

The Court: Very well, they will be received as [80] exhibit number 23, 24, 25 and 26. Those are all deposit slips for the Seattle First National Bank?

Mr. Conklin: Yes, sir, your Honor, with the depositor being named as the Petroleum Corporation of America.

Q. (By Mr. Conklin): Mr. Taggart, showing you Plaintiff's exhibit number 22, which is the ledger sheet for Petroleum Corporation of America in the Seattle First National Bank covering the period of April and May, 1958, and showing you Plaintiff's exhibit number 23, which is a deposit slip dated April 28th and is in the total sum of \$45,000, is there a credit in the ledger sheet for that deposit? (Handing documents to the witness.)

A. Yes.

Q. There is? And showing you Plaintiff's exhibit number 24, which is a deposit slip dated May 5, 1958, and the slip is for \$25,000, is credit of \$25,000 on the ledger sheet for that date?

A. Yes.

Q. And showing you Plaintiff's exhibit number 26, which is the deposit slip for May 7th in the sum

(Testimony of Philip V. Taggart.)

of \$6,200, does a credit appear on the ledger sheet for that date? (Handing document to the witness.)

A. Yes.

Q. Of that amount? A. Yes, sir. [81]

Q. And showing you Plaintiff's exhibit number 25, being a deposit slip dated May 6th for \$15,000, does a credit appear for that amount on the ledger sheet? (Handing document to the witness.)

A. Yes, it does.

Q. According to that ledger sheet, Mr. Taggart, what was the balance in the Petroleum Company of America account on April 25?

A. The balance in the account on April 25, was \$2,196.85.

Q. And what was the balance on May 2nd, 1958?

A. The balance on May 2nd was \$7,067.19.

Q. And what was the balance on May 8th, 1958?

A. The balance on May 8th was \$4,974.53.

Q. And did this particular account of the Petroleum Corporation of America have any credit arrangement with the Seattle First National Bank?

A. No, they did not.

Mr. Conklin: Your Honor, counsel will stipulate to the introduction of a corporate resolution of authority by which the Petroleum Corporation of America authorized persons named in the resolution to draw against the corporate account in Seattle First National Bank. And the signature [82] card, together with such corporate checking account.

(Testimony of Philip V. Taggart.)

The Court: Very well. That will be received as exhibit number 27.

(The documents referred to were received in evidence as Plaintiff's exhibit number 27.)

Q. (By Mr. Conklin): Now, Mr. Taggart, with reference to Plaintiff's exhibit number 22, did you hear the testimony of Mr. Klenske this morning as to how the Bank of Hawaii set up its ledger accounts? A. I did.

Q. And is the same procedure followed by the Seattle First National Bank?

A. Yes, sir, it is.

Q. Very well, Mr. Taggart, showing you in a group Plaintiff's exhibit number 16, number 15, 17, 18, and 19, will you examine the face of those checks and also the back for the endorsement? Now, do those checks indicate where those checks were deposited? A. Yes, they do.

Q. All of them?

A. All but one, one is a little faint.

Q. Well, except with regard to that one,—which is what? Is it this one? A. Yes.

Q. That is Plaintiff's exhibit number 17. With [83] regard to the other exhibits you have in your hand, you say they do exhibit where those checks were deposited? A. That's correct.

Q. And where were they deposited?

A. Seattle First National Bank.

Q. And you have previously testified as to the routine that was followed, that is followed by the Seattle First National Bank with regard to checks

(Testimony of Philip V. Taggart.)

deposited in the Seattle National Bank but drawn on out-of-town banks?      A. Yes, sir.

Q. Was that same routine followed with regard to these checks?

A. Yes.

Q. Now, with regard to exhibit 17,—and if you would examine that—does that indicate where it was deposited?      A. It is written in ink here.

The Court: What is the answer?

The Witness: It is written in in ink. But there is a slight—apparently the endorsement stamp didn't take on this one.

Q. (By Mr. Conklin): And what is the indication of the mark of that stamp?

A. It is a blue ink. There is a slight trace of it here. [84]

Q. And what would that indicate?

A. Well, it would indicate that it had gone through the endorsement machine but might have——

Q. Whose endorsement machine?      A. Ours.

Q. What is that?      A. The bank's.

Q. When you say the bank's, you mean the Seattle First National Bank?      A. Yes.

Q. And with regard to that exhibit, what is the routine for forwarding checks followed with regard to that particular check—was the routine for forwarding checks followed with regard to that particular check?      A. Yes.

Q. Now, you have testified generally as to the routine followed by your Seattle First National

(Testimony of Philip V. Taggart.)

Bank in forwarding checks drawn on out-of-town banks. You state that these checks followed exactly the same routine?      A. Yes.

Q. Now, could you tell us exactly how these checks were forwarded and by what means forwarded to the Bank of Hawaii?

A. Well, they went right through our transit department, sent out airmail to the Bank of Hawaii.

Mr. Conklin: No further questions.

Mr. O'Neill: I have just a couple of questions.

### Cross Examination

Q. (By Mr. O'Neill): Mr. Taggart, on the corporate resolution which was introduced into evidence here, have you seen this, the photostat of this?      A. No, I haven't.

Q. Can you state as to whether or not what is marked and admitted here as people's exhibit number 27, I believe——

The Court: Yes, 27.

Q. (Continuing) ——is that a photostat of the resolution on file with your bank? (Handing document to the witness.)      A. Yes.

Q. And do you happen to know M. A. Harris? Who is that?      A. No, I don't.

Q. Do you know Ralph Purvis?

A. No, I don't.

Q. Do you know Warren P. Doing?

A. I met him.

Q. Is Mr. Purvis a State Senator and Attorney in [86] Bremerton, Washington?



(Testimony of Philip V. Taggart.)

A. I know his name but I don't know.

Q. The name and occupation? A. Yes.

Q. Now, one thing about this exhibit number 22, which, I guess you would call it the statement or ledger sheet of the Seattle First National Bank—is that correct? A. That's correct.

Q. Referring to that exhibit, of these deposits which were made in the Bank of Hawaii, was ever at any time checks drawn against those deposits by Petroleum Corporation of America?

A. Would you state that again?

Q. Referring to those items, and those were the ones which were placed in the Bank of Hawaii, in your bank, is that correct? A. Yes.

Q. At any time did the Petroleum Corporation of America ever attempt to draw any checks on the Seattle First National Bank against those deposits?

A. Yes.

Q. Those were not on those deposits, were they?

A. Those were on other deposits.

The Court: You will have to keep your voice up.

The Witness: There were checks drawn against these deposits.

Q. Against those deposits? A. Yes.

Q. But every other check was good as shown by every other deposit and the balance? A. Yes.

Mr. Conklin: Could we have a clarification what he means by every other check? I don't follow it.

Q. (By Mr. O'Neill): Well, there is a deposit here for \$5,000? A. Yes.

Q. A deposit for \$5,200? A. Yes.

(Testimony of Philip V. Taggart.)

Q. A deposit for \$45,000? A. Right.

Q. That is one of those you have been referring to? A. Yes.

Q. And you get on over here, \$7,800?

A. Yes.

Q. \$6,200 and a \$100? A. Yes.

Q. And every check drawn against those that I have talked about was a good check and was paid by your bank, is that right? [88]

A. That's correct.

Q. The only thing that we are talking about is these other amounts which were deposited by the Bank of Hawaii, is that right? A. Yes.

Q. And your bank never gave credit for those? Never accepted them, did they? They were always held for collection? A. Held for collection.

Q. So your bank never gave credit. It was strictly a suspension item?

A. We did give credit.

Q. You merely made a paper transaction, is that what you are talking about? Isn't that right?

A. We did pay against them.

Q. You paid against them?

The Court: I can't hear you, Mr. Taggart. I have to hear the evidence in this case, too.

The Witness: We paid against those checks.

Q. (By Mr. O'Neill): Who did you pay?

A. I didn't see the actual checks myself.

Q. You never paid the Bank of Hawaii for those checks?

(Testimony of Philip V. Taggart.)

Mr. Conklin: Again, your Honor, what checks are you referring to? [89]

Mr. O'Neill: Specifically the deposits referred to here, \$28,000 and \$16,000.

Mr. Conklin: Those are checks drawn on the Bank of Hawaii?

The Witness: Those are drawn on the Bank of Hawaii.

Q. (By Mr. O'Neill): And you never paid those? A. Yes, we paid against them.

Q. Who did you pay?

A. I don't know how they went out. Here is the check against the deposit. And the funds were withdrawn the same day they were paid in.

Q. That what you are talking about is a paper transaction between your bank and on this sheet, isn't that right?

A. Well, the balance went down. We paid the checks.

Q. Now, the testimony of Mr. Klenske from the bank is that they were returned. The Bank of Hawaii never received credit from you and you never paid the Bank of Hawaii.

A. Yes, I think we did.

Q. You think you did? A. We did.

Q. Do you have the record of that?

A. I can't tell you who the funds were paid to.

Q. Or even if they were paid?

A. Our ledger sheet indicates that the funds were withdrawn.

(Testimony of Philip V. Taggart.)

Q. But don't they also indicate that everything was in error, all of those deposits were in error?

A. No.

Q. I am going to hand you what appears to be a photostat of the bank record and ask you as to whether or not along side of certain deposits which you testified to isn't there stamped in "error"?

A. Which ones are you talking about?

Q. Right here and here and here, the same as appears on the one you have got in your hand. (Indicating on document.)

A. Are you talking about one particular deposit?

Q. I am talking about every one of the deposits which appears on this sheet where the word "error" is stamped along side of it.

A. Well, those were posted to the account before the deposit slip had gotten up there, and posted in error.

Q. Posted in error? A. Yes.

Q. Because those were still suspension or collection items, isn't that right? [91]

A. That's right.

Q. And when you finally, when the thing finally worked out, you brought it down to the balance here, brought it down to the balance here of \$1,274.17, isn't that right?

A. You are talking about April 30th?

Q. Yes.

A. There was a deposit on April 30th of \$45,000. And on the same day there were two checks paid

(Testimony of Philip V. Taggart.)

against that deposit, one for \$28,000 and one for \$16,000. They were paid against that deposit.

Q. And then you went back up to the original deposit of \$28,000 and \$16,000, isn't that correct, and stamped in there "error" also?

A. No, that isn't so on mine.

Q. Right here. (Indicating on document.)

A. That was a different date altogether.

Q. The same transaction, though, isn't it, arising out of the same thing?

A. It is probably the same thing.

Q. All we are doing in effect is talking about just paper transactions back and forth and the bank never actually paid out one cent on any of these checks, did they?

A. They did here on April 30th.

Q. You say now that you paid the Bank of Hawaii [92] \$28,000 and \$16,000, is that right, on April 30th?

A. Apparently it was so.

Q. No, I don't mean apparently. Did you or didn't you?

A. Yes.

Q. You say yes now? Now, I am going to hand you the photostatic copy and ask you to compare that with the document you have in your hand and see whether or not they compare favorably or identically? (Handing document to the witness.)

A. Yes, they are.

Q. They are identical?

A. There is just a small little discrepancy here. It doesn't quite come out.

Q. It doesn't quite come out?

A. Yes.



(Testimony of Philip V. Taggart.)

Mr. O'Neill: Your Honor, we would like to offer at this time which would be Defendant's exhibit——

The Court: "A."

Mr. O'Neill: ——"A," which purports to be a photostatic copy of the ledger sheet of the Petroleum Corporation of America with the Seattle First National Bank, Seattle, Washington.

The Court: Well, you say it purports to be. I thought the witness testified that it was a photostatic copy. [93]

Mr. O'Neill: Yes.

The Court: It will be received as exhibit "A."

(The document referred to was received in evidence as Defendant's exhibit "A.")

Q. (By Mr. O'Neill): Just so that I am perfectly clear on this, Mr. Taggart, and that there is no misunderstanding, you are saying now that these items which appear on here, \$28,000 on the left hand column and \$16,000 on the column next to it—— A. Yes.

Q. ——you paid those amounts to the Bank of Hawaii?

A. I can't tell you who we paid them to but they were paid.

Q. Do you know who the checks were drawn on?

A. No.

Q. And these are deposits now which also appear on that ledger card under date of approximately date of approximately——what would that be, April 28th or 29th? A. This is the 28th.



(Testimony of Philip V. Taggart.)

Q. Now, there is one of \$28,000 and \$16,000. Would that be on April 28th? A. Yes.

Q. Now, those particular deposits are stamped in error, is that right? [94]

A. They were posted in error.

Q. Posted in error?

A. By the bookkeeper.

Q. And there was never any credit given on this side of the ledger sheet?

A. Not on that date.

Q. And you go back down to the 30th now and you have got another deposit of \$45,000 on April 30th, is that correct? A. That's right.

Q. So two days after this deposit of \$28,000 and \$16,000 you go back to the 30th before you find the entry actually down here, is that right?

A. Yes.

Q. And these two checks, \$28,000 and \$16,000, is that right? A. That's right.

Q. Now, the Bank of Seattle is not out one cent as a result of this transaction, are they?

A. No.

Q. They have never lost one penny, have they?

A. No.

Q. And still you say they paid 28 and \$16,000?

Mr. O'Neill: That's all, Mr. Taggart. That's all.

The Court: Any redirect, Mr. Conklin?

(Testimony of Philip V. Taggart.)

Redirect Examination

Q. (By Mr. Conklin): Mr. Taggart, with regard to Defendant's exhibit "A," being the photostat that you have been just looking at, when you say you paid out against this account, I think what Mr. O'Neill was getting at was this, that where there may be a credit to this account, just an entry made, credit to this account because of a deposit, likewise there would be a debit against this account because of a check drawn against the account which came in? A. That's correct.

Q. So that what he is getting at, I believe,—and correct me, Mr. O'Neill, if I am wrong—what he is getting at is that the transactions were on the ledger sheet with regard to deposits and with regard to checks drawn against the account but that all of these entries were bookkeeping entries with regard to debits and credits but that as far as hard dollars and cents were concerned the bank did not pay out such sums? A. That's right.

Q. Is that what you are getting at? His point being that the withdrawals made were because of checks drawn against this account which came in, is that correct? [96] A. That's correct.

Q. And that is what happened? A. Yes.

Q. And that is an affair of Mr. O'Neill's—

The Court: Well, that is for the jury to decide, Mr. Conklin.

Q. (By Mr. Conklin): But with regard to such credits and debits, Mr. Taggart, as shown on the

(Testimony of Philip V. Taggart.)

ledger sheet marked Defendant's exhibit "A"—  
I will withdraw that question.

Mr. Conklin: We have no further questions.

The Court: Recross?

Mr. O'Neill: No, your Honor.

The Court: You may step down, Mr. Taggart.

(Witness excused.)

### NORMAN B. HART

a witness called by the Plaintiff, being duly sworn,  
testified as follows:

#### Direct Examination

Q. (By Mr. Conklin): Would you state your  
name, sir? A. Norman B. Hart.

Q. And what is your residence?

A. Arvada, Colorado.

Q. And where are you employed?

A. At the Denver U. S. National Bank. [97]

Q. In what capacity?

A. I am an assistant cashier in charge of the  
operations services department.

Q. And when you say operations services de-  
partment, would you explain what you mean by  
that?

A. These departments are the ones that are con-  
cerned with clerical and mechanical work in connec-  
tion with the bank checking accounts.

Q. And were you employed in such capacity in  
April and May of 1958? A. Yes, sir.

Q. Now, would you explain to the jury what the

(Testimony of Norman B. Hart.)

routine is of your bank with regard to checks? I will withdraw that question. Mr. Hart, would you explain to the jury the routine followed by the U. S. National Bank at Denver with regard to corporate accounts? That is, with regard as to how a corporate account is opened and what procedures are followed?

A. When a representative from a corporation comes into the bank to open a checking account, his first contact is with one of the new account officers. The type of account is discussed, various requirements that must be met; we would have to have a corporate resolution, that is, a synopsis of various events that happened at a Board of Directors, duly constituted Board of Directors Meeting [98] indicating various individuals as officers of the corporation and their several authorities, that is, as to whether they can borrow money, whether they can draw checks, whether they can make deposits. After such a form is prepared, the corporation seal is affixed. Money is placed on deposit in the bank for their credit and the checking account is opened. Usually at that point the signature cards are delivered to these officers and they are either signed in the bank or taken out and returned. When we receive those, why, the account is opened.

Q. Now, calling your attention to April and May of 1958, did the Petroleum Corporation of America have an account in the U. S. National Bank of Denver?

A. Yes, sir, it had two accounts.

(Testimony of Norman B. Hart.)

Q. And was there on file such corporate resolution and cards as you have described for that account?

A. There were two accounts, yes, there were on file such resolutions and cards.

Q. And in April and May of 1958, was there an account in the U. S. National Bank at Denver in the name of B. A. Williams II? A. Yes, sir.

Q. And do you have the original of the ledger sheets for that personal account with you?

A. No, I do not. [99]

Q. You do not? Why not?

A. In the posting system that the U. S. National Bank followed at that time we did not retain an original copy of the ledger sheet. We posted the several debits and credits for a customer, photographed the ledger sheet and mailed it along with the returned checks to the customer.

Q. Well, what is retained by the bank?

A. Photostatic record.

Q. A photostatic record? A. Yes.

Q. And do you have the bank's photostatic record for the account of B. A. Williams covering the period April and May, 1958?

A. Part of May, April and part of May.

Q. And do you have that with you?

A. Yes, sir.

Q. Could we see it?

A. There are actually two that cover this period. (Handing documents to Mr. Conklin, which Mr. Conklin shows to Mr. O'Neill.)



(Testimony of Norman B. Hart.)

Q. (By Mr. Conklin): Showing you a photostatic copy of a sheet purporting to be the ledger account for B. A. Williams II, commencing with the date of April—was that April 28th?

A. April 26th. [100]

Q. April 26th? And ending May 15, 1958. Is this a copy of the photostat which you have in your possession?

A. Yes, sir.

Q. It is a correct copy?

A. Yes, sir.

Mr. Conklin: We would offer this in evidence, your Honor.

The Court: There being no objection, it will be received as exhibit 28.

(The document referred to was received in evidence as Plaintiff's exhibit number 28.)

Q. (By Mr. Conklin): Now, with regard to that account in your bank in April and May of 1958, Mr. Hart, did the bank have any credit arrangement with this account of Mr. B. A. Williams II?

A. Well, if you mean by credit arrangement, did we honor over-drafts on this account, no.

Q. You did not? And handing you Plaintiff's exhibit number 28, Mr. Hart, what was the cash balance on Mr. B. A. Williams II account on April 30, 1958?

A. \$7.82.

Q. And what was the balance on May 14, 1958?

A. \$6.60.

Q. Do you have in your possession the signature card for this particular account we are discussing, the [101] account of Mr. B. A. Williams II?

A. Yes, sir.



(Testimony of Norman B. Hart.)

Q. Could you produce it, please? Do you have a copy of it, too?

A. Yes. (Handing document to Mr. Conklin, which Mr. Conklin shows to Mr. O'Neill.)

Mr. O'Neill: Did you offer these?

Mr. Conklin: Yes.

Mr. O'Neill: Are you going to?

Mr. Conklin: Yes. Your Honor, we offer the photostat of such signature card furnished to me by the witness, Mr. Hart, in lieu of the original.

Mr. O'Neill: Your Honor, I believe that the statements that are contained on this by the bank or by somebody, or whoever they are, as to what they are, stamped or not, it is nothing but an attempt to create some form of prejudice as against the Defendant. We are perfectly willing to agree that Mr. Williams had the account and that his signature, without any such things as these being introduced—they are attempting to prejudice the Defendant's rights in the case. We are willing to agree that Mr. Williams had the account and that is his signature.

Mr. Conklin: Very well. We will so stipulate and we will withdraw the offer.

The Court: Very well. Ladies and gentlemen [102] of the jury, I think I have advised some of you before but I will advise all of you now that when counsel stipulate to certain facts, as they just did, that is evidence which must be accepted by you.

Mr. Conklin: No further questions.

(Testimony of Norman B. Hart.)

### Cross Examination

Q. (By Mr. O'Neill): Mr. Hart, referring specifically to the exhibits which you have identified as being Plaintiff's exhibit number 28, does that show any check in the amount of \$50,000 that was received by the U. S. National Bank or a check in the amount of \$1,000? A. No, sir.

Q. It doesn't show any over-draft or anything there either, does it? A. No.

Mr. O'Neill: That's all, Mr. Hart. Thank you.

The Court: Just a moment. Is there any re-direct, Mr. Conklin?

### Redirect Examination

Q. (By Mr. Conklin): Showing you Plaintiff's exhibit number 9, Mr. Hart, which is a check in the amount of \$1,000 drawn on the U. S. National Bank, Denver, Colorado, dated May 12, 1958, I ask you, is there anything that appears on that [103] check showing receipt of a check by Denver National Bank?

A. Yes, there is. On the sticker on the front side of the check—rather, on the front of the check there is a sticker bearing the notation "Insufficient funds," which is a bank form that was applied to the check on its presentment. There is also stamp indicating that the check was protested for non-payment by a Notary Public on the 16th day of May.

Q. Now, when you say there is a stamp, a sticker

(Testimony of Norman B. Hart.)

for insufficient funds put on by the bank, which bank are you referring to?

A. By the U. S. National Bank.

Q. Showing you Plaintiff's exhibit number 11, which is a check drawn on the U. S. National Bank, Denver, Colorado, dated May 14, 1958, in the amount of \$50,000, I ask you the same question, was that check received by the U. S. National Bank of Denver, Colorado?

A. This check bears the same sticker, indicating that it was presented to the bank and returned for insufficient funds.

Mr. Conklin: No further questions.

### Recross Examination

Q. (By Mr. O'Neill): Mr. Hart, on these forms that you are talking [104] about, where does it say U. S. National Bank or Denver National Bank?

A. It doesn't say it.

Q. It doesn't say it? That is a common form used by a lot of banks, isn't it? A. No, sir.

Q. They all use the same thing, stamp and sticker, don't they? A. No, sir.

Q. Everyone is different? Or everyone is individual, do you mean?

A. That particular one bears the U. S. National Bank form on it and I don't think any other bank can use it.

Q. But there is nothing that says U. S. National Bank on there? A. Literally——

(Testimony of Norman B. Hart.)

Q. Nothing that is printed on there that says U. S. National Bank?

A. Not those words, no.

Mr. O'Neill: That's all.

The Court: You may step down.

Mr. Conklin: Nothing further.

(Witness excused.)

Mr. Conklin: The prosecution rests, your Honor.

The Court: Do you wish to make your opening statement to the jury now?

Mr. O'Neill: There is a matter I would like to take up with the Court, your Honor.

The Court: A motion?

Mr. O'Neill: Yes, sir.

The Court: Do you have any motions to make? If you have any motions to make, you can make them in the presence of the jury and judge, stating the grounds. If the Court desires argument, I will hear it in the absence of the jury.

Mr. O'Neill: May I reserve those motions without any prejudice whatsoever as to the rights of the Defendant, by reserving the right to make those motions at some other time out of the presence of the jury?

The Court: Well, I don't know what rights you can reserve. You have to follow the rules as set forth in the federal rules.

Mr. O'Neill: Your Honor, can I stop on my opening statement and rather than break it up between the opening statement and the testimony, start at one time? As long as the Court is going

to recess at 4:00, I would like to start the first thing in the morning.

The Court: Very well. May I see counsel at the bench just a moment? [106]

(Court and counsel confer at the bench without the presence of the Reporter.)

The Court: Ladies and gentlemen of the jury, again before excusing you, you are instructed not to discuss this case with anyone, allow no one to discuss it with you, avoid reading or hearing anything about it and form no opinions about it. We will start a half hour earlier tomorrow because in all likelihood you may get the case about 1:00 o'clock or shortly after lunch. You are excused until 9:30 tomorrow morning.

(Jury leaves courtroom at 3:52 p.m.)

The Court: This case will be continued until 9:30 tomorrow morning. The Court will adjourn until that time.

(The Court adjourned.) [107]

Honolulu, T. H., February 3, 1959

(Trial resumed at 9:30 a.m.)

The Clerk: Criminal number 11,312, United States of America, Plaintiff, vs. B. A. Williams II, also known as Byron A. Williams II. Case called for further trial by jury.

The Court: Are you ready, gentlemen?

Mr. Conklin: Ready for the prosecution.

Mr. O'Neill: Ready, your Honor. [108]

\* \* \* \* \*

Thank you very much. Your Honor, I would like to call Mr. Williams.

The Court: Very well.

B. A. WILLIAMS, II

a witness in his own behalf, being duly sworn, testified as follows: [115]

Direct Examination

Q. (By Mr. O'Neill): Be sure when you testify to keep your voice up so that everyone in the jury can hear you. Will you state your full name, please?

A. Byron A. Williams II.

Q. You also use the initials B. A. Williams?

A. I do.

Q. And what is your address?

A. Denver, Colorado.

Q. And your age? A. 29.

Q. I am not certain that they can hear you. Would you keep your voice up? What is your occupation?

A. I am an independent oil producer.

Q. Are you connected with the Petroleum Corporation of America? A. I am.

Q. And for what period and what length of time have you been?

A. I founded the Petroleum Corporation of America on May 29, 1957. It was and still is in existence. I am the President and the sole owner of Petroleum Corporation of America.

Q. Now, talking about the Petroleum Corpora-



(Testimony of B. A. Williams, II.)

tion of America, does that company have any existing oil or gas properties at this time? [116]

A. It does, yes.

Q. Will you describe to the Court and jury where those properties are and what they consist of?

A. We have producing oil wells. We have eight producing oil wells in the State of North Dakota. We have roughly some 17,000 acres of oil and gas leases scattered out throughout the Williston Basin area, through North Dakota, Montana and South Dakota.

In addition to that, we have oil and gas leases in the States of Colorado, Nebraska, Oklahoma, California; also in these various states we have mineral interests where we actually own the mineral rights rather than leases. In other words, it is like owning the whole land except we own just the mineral rights or whatever is derived from any minerals that are produced in these lands.

Q. Buddy, for the purpose of clarifying——

The Court: Would you call your client Mr. Williams?

Mr. O'Neill: Excuse me, your Honor.

Q. Mr. Williams, for the purpose of clarification and in order that the jury will understand your later testimony, would you explain to the Court and jury what is meant by a working interest, referring specifically to an oil and gas property? [117]

A. Well, a working interest is owned by the

(Testimony of B. A. Williams, II.)

people, whether it is a company, an individual, independent or a group of people such as we had in Honolulu, that put up the venture capital to actually drill the well. Now, those particular people or groups of people become the working interest owners. They will derive all of the income from the production with the exception of what the land owner owns himself, which is usually one-eighth. So usually your working interest will be 87 and a half percent of all the oil produced from this particular oil lease.

Now, these working interests, as what we will say Standard of New Jersey, would go out and drill a well. They would actually be the working interest holder. Sometimes they go into partnerships with other companies, other independent operators, and then they jointly drill the well. Well, they own these working interests.

Q. That is what these working interests are, what was sold here in Honolulu, is that right?

A. That is right.

Q. To the various investors here in the islands?

A. That's correct.

Q. Now, going into your background, where were you born?

A. I was born in Ardmore, Oklahoma. [118]

Q. What schools did you go to?

A. I attended East Central State Teachers College, and then I attended the University of Oklahoma.

Q. For what length of time?

(Testimony of B. A. Williams, II.)

A. In '47, '48 and '9.

Q. Did you have any time or did you spend any time in the Armed Forces of the United States?

A. I was in the Air Force, yes.

Q. In what branch or department of the Air Force?      A. In the intelligence.

Q. And where were you stationed during that time?

A. San Antonio, Denver, Colorado, and Topeka, Kansas.

Q. What was your father's occupation?

A. He was an oil lease broker.

Q. And he lived in Oklahoma?

A. That is true.

Q. And did business in that part of the country?

A. That's right.

Q. When did you get out of the Air Force?

A. In 1953, I believe it was.

Q. And then what did you do?

A. Prior to going into the Air Force I was buying oil and gas leases for different major companies in the States of North Dakota and Montana. After I received my discharge, I went back to Denver, Colorado, and set up an [119] independent brokerage business there, that I was buying and selling oil and gas leases throughout the Rocky Mountain area.

Q. Mr. Williams, let's go back just a little bit. Would you describe to the jury what you mean by an independent brokerage business? What is a gas and oil broker or gas and oil lease broker?

(Testimony of B. A. Williams, II.)

A. It is very much the same as a real estate broker with the exception that we are dealing in oil and gas leases. The major oil companies will not generally buy these leases themselves, due to areas having particular hot interests; at different times they will not want it known to other companies that they are buying these leases. So they will hire independent brokers such as myself to go out and purchase the leases in my name so that no one else will know that they are buying these leases themselves. And then after I have checked over the title and found it to be satisfactory, then I will make an assignment of this oil and gas lease to the company.

Q. And that is the business that you started up in 1953 in Denver, is that correct?

A. That is true.

Q. Now, will you go ahead and describe what you did and how things went after that?

A. Well, in 1953 and '54 and '55 my business grew considerably in Denver. I was handling accounts for several [120] of the major oil companies there. And also at that time I had accumulated quite a bit of money and I was buying oil leases for my own account. Due to a tax position or a tax situation, the government will allow you to deduct drilling expenses on drilling these oil wells. So at that time I started, because of making this money in the lease business, I started drilling oil wells on my own. I did that through, well, I

(Testimony of B. A. Williams, II.)

started actual drilling on my own actually in 1955, which I have continued to do until now.

Q. When did you come to Honolulu?

A. I came to Honolulu in November of 1956.

Q. And why and what was the purpose for it?

A. I had some people to see over here, and also at that time I had an aunt that was living here.

Q. In Honolulu? A. Yes.

Q. How did you get started in this brokerage business or lease business over here in Honolulu, the sales?

A. Well, I went to dinner with my aunt and her former husband, Mr. Ranieri, and met several of their friends and acquaintances and I was here for about at that time, about two weeks; during the course of conversations, why, people would inquire about the oil business and the tax advantage associated with it. And through [121] these conversations they encouraged me to open an office here for the investors here and start investing.

Q. And you did that? A. That is true.

Q. And these interests were sold out here, is that right? A. That's right.

Q. And I believe you stated in May of 1957 the Petroleum Corporation of America was formed, is that right? A. That is true.

Q. What was the purpose for that?

A. Well, during the first six months of 1957 I was operating these properties under my own name as an individual, as I had done on the mainland with the other companies. But due to an excessive



(Testimony of B. A. Williams, II.)

amount of travelling and I was having to do by coming over here on commercial liners, and then at that time we had a private plane that I was using to go up to in North Dakota to see the property up there, the investors asked that something be done in order to protect their interest in the event of my death. So a corporation was formed so that in the event something happened to me their interest would still be protected and it wouldn't have to go through any estate and have legal problems. [122]

Q. Now, when Petroleum Corporation of America was formed, who were the officers of it and how was the company conducted and carried on and where were its offices?

A. When it was formed, I was spending a great deal of my time in Honolulu, so I acquired the services of a man who was an attorney by education and actually had been in the oil business some 17 years for the Shell Oil Company. I knew that I would be out of town a great deal and I needed someone to run the operational part as far as letting contracts, getting the wells drilled, buying equipment, and in general running the oil part of the business. He at that time was elected President of the company.

Q. Who is that?                    A. I beg your pardon?

Q. Who was that?

A. That is Alfred R. Thomas. We had a Secretary and Treasurer of the company who at that time was my attorney by the name of Leo W.



(Testimony of B. A. Williams, II.)

Kennedy. The principal offices were set up in Denver as far as running the actual oil business. The investors' part was handled through Honolulu. We had an office here.

Q. And there was an office maintained in Denver, Colorado, is that right?      A. That is true.

Q. Now, did you ever have any conduct or any connections with a man by the name of Gates with regard to the Petroleum Corporation of America?

A. Yes, we did. When we started actually [123] finding the oil and putting the wells in production, we had to make a considerable amount of purchases as far as the equipment, such as the pumping jacks, the tanks to hold the oil, the casings to go in the wells and all of the tangible equipment. So Mr. Gates came to me and he had had that experience and wanted the contract to furnish these supplies for us. In other words, he would go out and buy from all the different suppliers and then sell to us as being one supplier. So in order to save a lot of time and personnel, by hiring additional personnel to handle all that, I went ahead and let him have the contract to furnish this equipment for our wells.

Q. And did he do that?      A. Yes.

Q. And did you pay him?

A. Yes, we did. We paid him in excess of \$325 or \$30,000 over a period of a year, a year and a half.

Mr. Conklin: Your Honor, I am sorry to interrupt, but we question the relevancy of this whole

(Testimony of B. A. Williams, II.)

line of testimony. And, therefore, we would object to any continuation of it. I can't see that it is in any way relevant.

The Court: Well, there is nothing before the Court now. But I think you have about covered your background, have you not? [124]

Mr. O'Neill: Yes.

The Court: Very well. Proceed.

Q. (By Mr. O'Neill): Now, going into the latter part of 1957, the early part of 1958, where were you at that time?

A. Well, I was spending my time between Denver, Honolulu, and North Dakota.

Q. Was Mr. Thomas still active in the company at that time?

A. He was until the first part of December. And at that time a serious back injury that he had in the years past started giving him some trouble so he had to go into the hospital and have an operation. He had the operation. However, he had been in bed since then. It has been a little over a year. And at that time I had to take over the operation of the company.

Q. What was the condition of the company or what was going on at that time that you took it over?

A. Well, at the time I thought everything was all right, until some of these liens started being filed because this man that we had given the contract to to furnish the equipment, he was paid in full, but he failed to pay his suppliers. So conse-

(Testimony of B. A. Williams, II.)

quently they in turn came back against the property. When I found that out is when I [125] became very disturbed because they had paid him in excess of \$300,000 and it hadn't all gone to the suppliers. So our property at that time became in jeopardy.

Q. By these liens being filed, what actually happened by these liens being filed?

A. Well, when the supplier is not paid for his services or supplies, he can file a lien which in effect ties up your property. He files it in the court house and keeps you from selling the property or receiving any income from it.

Q. And that is what happened then?

A. Yes.

Q. In 1958, the early part of that, is that right?

A. Yes.

Q. Now, did the Petroleum Corporation of America have occasion during 1958 to establish an office in Seattle, Washington?

A. Yes, we did. After I found out that these bills had not been paid and our property was going to be in trouble if we didn't come up with the money, I at that time decided to sell some of our interest that we had retained in the sales from Honolulu. In other words, we owned interest in actual producing wells. Through an acquaintance I had of an oil man in Denver by the name of Doing—he knew a state senator and attorney in Seattle, Washington, and we made the trip to Seattle, contacted him, and he agreed [126] to open the office

(Testimony of B. A. Williams, II.)

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(Testimony of B. A. Williams, II.)

for us in Seattle and do the actual selling of the interest because he knew the people and we did not.

Q. What was his name? A. Ralph Purvis.

Q. That is the senator, attorney that you are talking about? A. Yes, sir.

Q. Was he connected with the firm or connected with the company in Seattle?

A. He was much the same as Mr. Ranieri was here. He was our resident manager there and actual salesman. He did the selling.

Q. Now, referring specifically to April in 1958, last year, did you have occasion to talk with Mr. Doing at any time during that early part of April?

A. I did. We opened the office in Seattle, in the early part of April, and Mr. Doing was spending some time there, practically all of the time. I would go in maybe once every week or so. And Mr. Doing would report to me when he had made a sale. And at that time I would instruct him what to do with the money.

Q. Now, referring specifically to these bank accounts, will you explain to the jury and the Court how these bank accounts were maintained and kept and the purpose of them? [127]

A. We had our operating account at the U. S. National in Denver. We had the investors' account in the Bank of Hawaii here. When we opened the office in Seattle, we opened an account there mainly to process the checks before they would be sent



(Testimony of B. A. Williams, II.)

elsewhere. And we opened that account in Seattle First National.

Q. And where were the books and records of the company kept?

A. They were all kept in Denver.

Q. In the main office in Denver, Colorado, is that right?      A. Yes.

Q. Now, did you talk or have occasion on or about April 24th to talk or be in contact with Mr. Warren P. Doing?

A. Yes. He called me, advised me that some 45 or \$6,000 worth of interest had been sold and he was going to collect the money and he wanted instructions as to what to do with the money.

Q. And what did you tell him to do?

A. I advised him to go ahead and deposit it in the Seattle First National Bank, and then I would transfer it on over to Honolulu so that we could cash it out from there.

Q. And that is what was done, is that right?

A. That's right. [128]

Q. And do you remember approximately when it was that he told you he was going to make this deposit?      A. It was on April 24th.

Q. Of 1958, is that right?

A. That's right.

Q. And then what did you do after that?

A. Well, due to all of these people in Denver wanting their money through various things on the wells and investment and leases, they were continually hounding me for their money, naturally.

(Testimony of B. A. Williams, II.)

So when he advised me that he had the money collected and I told him what to do with it, then I started writing checks to these people so they could get their money.

Q. Now, to whom were these checks written and on what account?

A. Well, the largest check was made payable to a Jim Green in Colorado Springs. I believe it was 26 or \$27,000. That check was the second payment on a shopping center that we had acquired. The original payment was \$10,000. This other money had to be paid to his bank so that they could close out the loan against this property because we had already built this supermarket. And the bank was naturally wanting to get the loan closed before [129] their examiners came in and found this outstanding loan.

Q. Now, was that check drawn on the Bank of Hawaii? A. Yes, it was.

Q. The Petroleum Corporation of America account? A. Yes.

Q. Here, is that right? A. Yes.

Q. Now, that was to be money which was represented by the sales of Petroleum Corporation working interest, is that right? A. It was.

Q. And it was on that basis that you wrote those checks and asked Mr. Ranieri to make this deposit? A. Yes.

Q. And what had been assured you in Seattle, is that true? A. That is true.

Q. Now, going on just a little bit, can you enu-

(Testimony of B. A. Williams, II.)

merate and try to list as best you can to this jury to whom were these checks paid and what was the purpose to use this money for?

A. Well, that was one item. There was another item, \$5,000, that was paid to T. N. Jordan. We had during the year bought some \$116,000 worth of oil and gas leases for Mr. Jordan. This \$5,000 was the final payment to get these [130] leases released from the bank. They were tied up over at the U. S. National in the collection department. And this was the final payment to release them, the reason being that I wanted to get the leases out of the bank so that we could proceed to sell them.

There was another item on there for \$5,000 paid to Fred Wallace of Boulder, Texas. We, through some of the investors in Honolulu, were proceeding to drill some wells in Texas. This was the initial payment on one of those wells.

There was another check for \$1,100 to a K. B. Well Service out of North Dakota. They had gone in and done some reworking on some of our wells up in North Dakota.

There was, I think, a \$650 check to my father which was money that the company had borrowed from him and we were returning that.

Q. Can you think of any others?

A. No, that's all.

Q. That pretty well covered this amount that was supposed to have been deposited in Seattle, is that right?

A. I believe it did, yes.

(Testimony of B. A. Williams, II.)

Q. Go ahead and just tell the Court and jury exactly what happened after that, what you did?

A. Well, when Mr. Doing advised me that this \$46,000 was going to be deposited, I, of course, drew [131] these particular checks that I just told you about. Well, two or three days later he called me and advised me that Mr. Purvis had been over to the Washington Securities office and they had found that we should register our securities with them. So I contacted our attorney in Denver and had him proceed and get whatever information was required and sent it on. The information was compiled and sent up there and sent up to Washington. At that time Mr. Doing hired a local firm in Seattle to look at the information and prepare it to turn over to the Commission. So he advised me that the delay was going to be until we could get these papers filed. Well, naturally, I was concerned because I had these checks out to these people and drawn against this account. So at that time I went out to California to see an uncle that I had out there about borrowing the money from him. And, of course, I knew that time was running and I was afraid that the checks would go back, insufficient funds. So I had Mr. Doing deposit some checks drawn against the Bank of Hawaii. And what I was trying to do is keep these checks from going back until I could get in money raised, until I could get this money raised. Well, I got out to California and I had borrowed a considerable amount from my uncle before on various

(Testimony of B. A. Williams, II.)

deals that he was going in with me, and I got out there and he had already started on a venture and [132] his money was tied up. So I spent about four, five days with him attempting to either borrow the money or make some arrangement on it in Los Angeles. And then we found out that it was going to be too long so I think I might have gone up to Seattle. I was travelling around quite a bit trying to sell these leases that we had.

We had just paid Jordan \$116,000 for leases. We had an additional, we bought an additional \$42,000 worth of leases from the State of North Dakota. I was attempting to sell all of them or do anything to get this money. So I was doing what is in the course of this, was trying to keep these checks from going back, insufficient funds.

Q. And that is what was happening during this entire time, is that right?

A. Yes, that's right.

Q. Who were you attempting to sell these leases to? Or how were you doing that?

A. Well, I know my telephone bill will show it, that I called just about every lease broker in the Rocky Mountain area, major companies, in an attempt to sell these leases. At that particular time there was some kind of a crisis in the country and everybody was deciding they weren't going to make substantial purchases. And that was one of the reasons we couldn't sell the leases. [133]

Q. So what did you finally do then?

A. Well, I went—what I was going to do—well,



(Testimony of B. A. Williams, II.)

let's see—there was two checks for \$25,000 apiece that had been made payable to the corporation and drawn on the bank, I believe it was the Bank of Seattle. I could see that this situation was not going to be resolved, so I felt—I didn't put any more checks in the bank. Well, they came back insufficient funds. So I called Ranieri over here. I was in Denver at the time, I believe. And I called him and I told him that the deal in Seattle was going to take too long, we weren't going to be able to get the money there, so what to do was—he had some checks of mine here—so I told him to draw one against my personal account, go over to the bank and tell them those checks were coming back and to give him this. So that they would have something on their ledger sheets rather than overdrawn account, and that I would try to cover that check by the time it got to Denver.

Q. And that was this last check on the U. S. National Bank?

A. That was the last check for \$50,000 drawn against my personal account.

Q. About when was that, do you remember?

A. That was towards the end of May. I don't know. [134]

Q. And then what happened after that? What did you do?

A. Well, I don't remember the exact date on that. My father died June 1st and I went down to Oklahoma and after that I came over here and talked to Mr. Kenske. I told him that we had got-



(Testimony of B. A. Williams, II.)

ten all fouled up on the thing, that there certainly wasn't any intent to get any money because I didn't get any. And I was doing everything possible to get the bank back their money.

Q. And you did that, is that right?

A. That is true.

Q. Did you borrow that money to pay it back?

A. I borrowed it, yes.

Q. Signed personally for it?

A. That's correct.

Q. And then it was all repaid in full to the Bank of Hawaii?

A. It was, towards the end of June.

Q. And were you contacted by the Postal Inspectors at any time during this period of time?

A. No, I was not. I got ahold of \$2,500, I believe it was, which I wired to the bank from Denver. While over here, I believe I got in here on Saturday or Sunday, I talked to Mr. Klenske on Monday—Monday and Tuesday maybe—and then along about Thursday one of our investors came in [135] with some money that he had owed on a previous deal. It was \$2,850. I called Mr. Klenske and told him that I had the check from the investor and asked him if I should bring it over, and he said, no, that he would send a messenger over. So he sent a messenger over and picked up the check for \$2,850. So at that time we were over-drawn \$50,000. So this reduced it with the \$2,500 I had wired from Denver and with this \$2,850, it reduced it, I think it was about \$46,000 over-drawn.

(Testimony of B. A. Williams, II.)

Q. And it was after that that you were contacted by the Postal Authorities, is that right?

A. Well, it was that afternoon. He and the U. S. Marshal walked into the office.

Q. But none of the time during any of these things were going on that you have related here were you ever contacted by any Postal Authorities or any law enforcement agencies?

A. None whatsoever.

Q. Until after this was all ended and the bank got its money back?      A. That's right.

Q. And they were subsequently paid shortly after that?

A. I did know this, that they reviewed the situation because Mr. Klenske told me after he got in the bank that [136] he had been talking to them. So I did know that they were examining the situation. But I felt that I certainly hadn't done anything wrong and I was trying to repay the money which I was doing. I had paid them some. I didn't feel——

Q. Did you ever obtain anything at all from the proceeds of these checks yourself?

A. Actually no, because there was other money put in all of these accounts during this time. We opened the account in Seattle with \$5,000 of our own money. And I bought about \$4,000 worth of furniture and office equipment to open this Seattle office with. Of course, all the travelling expenses. So actually I didn't derive anything out of this 50,000, no.

(Testimony of B. A. Williams, II.)

Q. Out of the entire thing? A. No.

Q. At any time that these checks were deposited in this bank, did you ever draw any money against these checks in the Seattle National Bank, Seattle First National Bank?

A. Well, we had various funds going in the Seattle First National.

Q. No, I mean, you didn't write any checks for \$50,000 against the Seattle Bank on these uncollected funds? A. No. [137]

Q. And the Bank of Hawaii is the only one that allowed that over-draft and that was paid in full, is that right?

A. Yes. The reason they did is, we had from time to time put a considerable amount of money in the Bank of Hawaii. And during all this time I was in the mainland and Ranieri would call me that this money was going to be picked up that afternoon or the next morning and we had suppliers going; at one time we were drilling more wells than any operator in North Dakota; we were spending an awful lot of money every day. And I had people calling me for checks. So when Ranieri would advise me that the money was going to be put in, I would go ahead and pay it out. It was drawn against the bank—well, numerous times the bank would call in the morning and say that there were some checks in for maybe 10 or 15 or \$20,000, and Ranieri would say, well, I just made a deposit this morning, which was not on the books. So the bank's position was, this had happened and it had

(Testimony of B. A. Williams, II.)

always been made good before, that is why the thing happened.

Q. Now, during this period of time, during 1958, when these liens that you have discussed and mentioned here were filed, did that tie up the production money or production account of the Petroleum Corporation of America? [138]

A. Yes, it did.

Q. In other words, that just shut off all the money coming into the company?

A. It did. I talked to the refinery one day and asked them about our production check. As I say, we were spending a lot of money. We asked him about the production check, we asked them about it. They said they were going to send it out that day. And then they got these liens in the mail that day and so consequently they didn't send our check.

Q. The only income that the Petroleum Corporation of America had or the only income that the investors had from these wells would be from these refineries, is that correct? A. Yes.

Q. And when these liens were filed, it would naturally tie up all of the money?

A. It tied up all of the money, yes.

Q. And they are still tied up as a result of that situation?

A. \$100,000 tied up right now.

Q. And that is the investors' money and Petroleum Corporation money, when these law suits and everything were settled, is that right?

A. That is true. [139]

(Testimony of B. A. Williams, II.)

Q. And did you ever at any time during this whole transaction ever intend to cheat or defraud anybody in connection with this?

A. I certainly did not.

Q. You did everything you possibly could to keep them advised and let them know what was going on in the situation?

A. I did. I called Ranieri up everyday during the course of this situation and told him to do different things, to call Mr. Klenske and advise him that we certainly weren't running out on anybody. It was an unfortunate situation that happened and we were going to get it straightened out as quickly as possible, as quickly as we could.

Q. And eventually it was done?

A. That is true.

Q. But you were the only one in the company that was doing anything at that time?

A. That is right. Mr. Thomas was in the hospital and I was the one that was running the whole company.

Q. The thing, everything was thrown on your shoulders at that time?

A. That's right.

Mr. O'Neill: That's all. Thank you.

The Court: Cross examination? [140]

### Cross Examination

Q. (By Mr. Conklin): Mr. Williams, you stated on direct examination that after Mr. Doing had told you that this money would be deposited that



(Testimony of B. A. Williams, II.)

you started to write checks because these people were hounding you for money, is that correct?

A. Yes, sir, that's right.

Q. I may not have the names right but the names aren't that vital. There was a big check for 26 or \$27,000 to Green, and 5,000 to a fellow by the name of Jordan, and 5,000 to a fellow by the name of Wall, 1,100 to the K and B Wells Service, \$650 to your father. Now, these were all debts of the Petroleum Corporation of America on its previous activities? A. Yes.

Q. And you stated on direct examination that after Mr. Doing had told you about this 45 or \$46,000 that would be available, that the Securities and Exchange Commission of the State of Washington said that you had to register before you could sell any of these working interests, is that correct? A. Yes, sir.

Q. And as far as the sale of the working interest in Seattle, those were, as I understand from your direct testimony, those were working interests which belonged [141] to the Petroleum Corporation of America, is that correct? A. Yes.

Q. And Mr. Doing had told you about the sale of these interests about April 24, 1958?

A. This particular item, yes, we had made sales prior to that time which he had deposited the money in the bank. He had actually gone ahead and collected.

Q. Sales of working interest? A. Yes.



(Testimony of B. A. Williams, II.)

Q. Well, how could you have sold working interest if you didn't have it with the F.C.C.—

A. It was after that that we went to the F.C.C. and found out that we had to.

Q. That you were supposed to? A. Yes.

Q. I see. But these various items, you said, since people were hounding you for money you started writing checks and they were items that you wrote knowing that Mr. Doing had said that the \$46,000 was going to be deposited? A. That is true.

Q. Now, if that money that Mr. Doing told you was going to be deposited represented sales of Petroleum Corporation of America assets, why did you have Mr. Ranieri deposit \$44,000 to your personal account in the Bank of Hawaii? [142]

A. Well, Mr. Conklin, I am the Petroleum Corporation. It doesn't make any difference. I own the corporation. And some things are done in my name personally and some things are done in the corporate name. This was done for convenience. I travel around the country a great deal and, naturally, I can't be in these offices all at the same time when this money comes in. So I leave signed checks in blank in these offices and then over the telephone wherever I am I instruct the office people what to do with these checks, what to do with these checks.

Q. That's fine. I understand that. As the sole owner of the business? A. Yes, sir.

Q. But you have testified that you wrote a check to this man Green for 26 or \$27,000, \$5,000 to Jor-

(Testimony of B. A. Williams, II.)

dan, \$5,000 to Wall, \$1,100 to the Wells Service and about \$650 to your father. All right. Let's say that's 26,000 plus 10 which is 36, that is 37, about \$38,000 out of the 46.       A. Yes.

Q. And you said these were all corporate debts. Did you write all these out of your personal account or out of the corporate account?

A. I believe those were written out of my personal account. As I say, it makes no difference.

Q. Your personal account where? [143]

A. At the Bank of Hawaii.

Q. Your personal account at the Bank of Hawaii? So that shortly after April 24, 1958, you had written a check to a man named Green for 26 or \$27,000, a \$5,000 check to a man by the name of Jordan, \$5,000 check to a man named Wall and \$1,100 check to K. B. Well Service, and about \$650 to your father, is that correct? And then because of those checks written on your personal account in the Bank of Hawaii, you had Mr. Ranieri deposit \$44,000 in your personal account, is that correct? Is that right?       A. Yes.

Q. Now, I hand you a check dated April 11, 1958, showing a signature purporting to be your signature on a check. Is that your signature? (Handing document to the witness.)

A. Yes, it is.

Q. And it is drawn on the Bank of Hawaii, isn't that right?       A. Yes.

Q. And it is for \$500?       A. Yes, it is.

Q. And who is that to?

(Testimony of B. A. Williams, II.)

A. That is payable to T. N. Jordan.

Q. That is for \$500? And I show you a check dated April 24, 1958, purportedly bearing your signature and I [144] ask you is that your signature? (Showing a document to the witness.)

The Court: That is a nice conversation you are having there but the jury wants to hear the questions. You tend to get softer when you get closer to the witness.

Mr. Conklin: I will repeat that.

Q. I show you a check dated April 14th, 1958, purportedly bearing your signature, and I ask you is that your signature? A. Yes, it is.

Q. It is? And the check is payable to Jim Brown? A. Green.

Q. And the amount of the check is \$27,520.09?

A. That's right.

Q. And that is drawn on your personal account at the Bank of Hawaii, isn't that correct?

A. Yes.

Q. That is April 14th? I show you a check dated April 17, 1958, and I ask you, does that check bear your signature? (Showing a document to the witness.)

A. Yes, it does.

Q. And that check is payable to K. B. Wells Service and that is for \$1,100? A. Yes, sir.

Q. All right. I show you a check dated [145] April 22, 1958, and ask you, does that check bear your signature? (Showing a document to the witness.) A. Yes, it does.

(Testimony of B. A. Williams, II.)

Q. It does? And this check is for \$25 payable to the Exetor Hotel, is that right?

A. That is true.

Q. I show you a check dated April 25, 1958, and ask you, does that bear your signature? (Showing a document to the witness.) A. Yes, it does.

Q. And that check is payable to the Montclair Insurance Company or Investment Company?

A. For \$50.

Q. For \$50? And there is a notation on that check "Deposit Apt 605"? A. That's right.

Q. I show you a check also dated April 25, 1958, which is payable to J. H. Ware. Is that what it is?

A. Yes, I believe that is dated April 29.

Q. April 29? Does that contain your signature?

A. Yes, it does.

Q. And that is for how much? A. \$500.

Q. I show you a check dated April 25 and I ask you, does that check bear your signature? (Showing a document to the witness.) [146]

A. Yes, it does.

Q. And who is that payable to?

A. That is payable to my father.

Q. To your father, and that is for \$650—right?

A. Yes.

(Counsel confer.)

Mr. Conklin: Your Honor, we offer the check dated April 11, 1958, payable to Mr. T. N. Jordan in evidence.

The Court: I noticed stamp marks and that there is no room for an exhibit number.

(Testimony of B. A. Williams, II.)

Mr. Conklin: Yes, your Honor, there are several that way.

The Court: I would suggest that they be received as a group, as 29-A—how many are there?

Mr. Conklin: I have four here.

The Court: A, B, C and D. And that we pin them together. Pin them together, Mr. Thompson.

Mr. Conklin: The checks are April 11th, the one I just gave, April 17, 1958, payable to K. B. Wells Service, April 14th payable to Jim Green, April 22nd payable to Exetor Hotel.

The Court: They will be received as exhibit 29-A, B, C and D. [147]

(The documents referred to were received in evidence as Plaintiff's exhibit 29-A, B, C and D.)

Q. (By Mr. Conklin): Showing you Plaintiff's exhibit 29-C, which is a check dated April 14, 1958, payable to Jim Green in the amount of \$27,520.09, and referring you to Plaintiff's exhibit number 12, which is a ledger sheet for your personal account in the Bank of Hawaii, would you please read off to the jury what the balance was in your account on April 14, 1958? (Handing documents to the witness.)

A. There is no date of April 14th on this sheet.

Q. All right. What is the earliest date before April 14th?

A. Well, there is one on April 8th.

Q. What was the balance on April 8th?

A. \$2,284.88.



(Testimony of B. A. Williams, II.)

Q. What is the earliest date of entry after April 14, 1958?

A. There is another one, April 18th; balance is \$134.99.

Q. Now, with regard to these sales in Seattle of your working interest, didn't you work with Mr. Doing in talking to prospective purchasers about sales in Seattle?

A. Yes, I made two or three trips up there and talked with different people.

Q. Isn't it true that on April 24, 1958, there had been no agreement signed with any potential investors or any potential purchasers of working interest?

A. I don't actually know for sure. If you are referring to this \$46,000, no, they were not signed up on April 24th.

Q. They were people who had verbally said they were interested in buying?

A. That is exactly right.

Q. And did Mr. Doing inform you that on the telephone when he called you? A. He did.

Q. So that rather than Mr. Doing saying that he had deposited or was that day going to deposit \$46,000, what he told you on the telephone was that he thought that he would be able to sell about \$46,000 worth of interest in the next several days, isn't that right?

A. No, sir. I beg to differ with you. He told me he had them sold. That was much the same as we had the operation out here. Mr. Ranieri would tell



(Testimony of B. A. Williams, II.)

me he was going out to pick a check and he was going out to pick it up.

Q. He told you that he had them sold on oral representation? [149]

A. Certainly. If somebody tells you that they are going to buy something, you expect it to be good. It always was over here.

Q. Was that sale of working interest on about that time, was that ever consummated?

A. No, because we weren't—

Q. The \$46,000 was never received?

A. We would not conclude the deal because of this F.C.C. situation.

Q. And was the \$46,000 or any portion of it ever paid right up to this minute?

A. Whether we are talking—

Q. The sales in Seattle.

A. —there was some money received there, yes.

Q. Were these working interests ever sold in Seattle? A. Not after that time, no.

Q. And did the Petroleum Corporation of America subsequent to April 24th or a few days thereafter—let's say the month of April, 1958—down to February 3rd, 1959, has it ever qualified to the Securities and Exchange Commission of the State of Washington?

A. No, because we closed the office.

Q. When did you close the office?

A. I don't recall. [150]

(Testimony of B. A. Williams, II.)

Q. Wasn't it in May, 1958, one month after you opened it?

A. No, it wasn't. It was after all this mess came out over here.

Q. Wasn't that in May of 1958?

A. That was in May and June.

Q. May or June of 1958?

A. That's right.

Q. Either one month or two months after?

A. We found out it would be too expensive to qualify and decided not to.

Q. Decided not to? You stated on direct examination that your attorney in Washington was a man named Mr. Purvis, isn't that right?

A. Would you repeat that?

Q. Well, I may have made a mistake in saying that he was your attorney.

A. That's what caught me. He is an attorney but he was not representing us as such. He was our sales manager.

Q. Yes. It was my fault. I said he was your attorney. You didn't say he was your attorney. You said he was your manager in Seattle. Is that correct?

A. That's correct.

Q. Now, what was Mr. Doing's position? [151]

A. He was in effect co-manager with him because he had the oil experience that Mr. Purvis did not. So he would explain the oil terms to the investors along with Mr. Purvis.

Q. Wasn't Mr. Doing working on a commission basis?

A. Yes, he was.

(Testimony of B. A. Williams, II.)

Q. Wasn't Mr. Doing going to be entitled to receive a commission on that \$46,000?

A. Yes, he was.

Q. So that there wasn't \$46,000 available to you on April 24th or a few days thereafter? From the \$46,000 would have to be deducted 50% payable to Mr. Doing, is that correct?

A. Mr. Doing owes me quite a bit of money to this day.

Q. On or about April 24, 1958, with regard to the \$46,000, isn't it true that Mr. Doing, if that \$46,000 had ever been received, that Mr. Doing would have been immediately entitled to take out 50% of it?

A. 50%?

Q. Yes. A. For what?

Q. As his commission.

A. I have never heard of anybody getting 50% commission in my life. [152]

Q. What was his commission?

A. His commission was 5%. And, as I said, Mr. Doing owed me a considerable amount of money so he was not entitled to take any money out.

Q. So that if the \$46,000 had been received, Mr. Doing would have been entitled to receive \$2,300?

A. He would not have been. That would have been a credit for what he owed me, yes, that is true. Actual cash, no.

Q. Mr. Doing owed you a lot of money at that time?

A. Yes, he did.

Q. And he still owes you a lot of money?

A. He still does, yes.

(Testimony of B. A. Williams, II.)

Q. And how long had you known Mr. Doing in April 1958?

A. I had known him since 1952.

Q. When you were in the military?

A. Well, '52-'53.

Q. Because you did testify that you got out——

A. The early part of '53. I met him as soon as I opened my office in Denver or shortly thereafter.

Q. Now, with regard to the Petroleum Corporation of America and its business in Seattle, hadn't Mr. Purvis written you a letter of April 1st, 1958, telling you that the corporation would have to qualify in the State? [153]

A. I don't recall.

Q. You don't recall?

A. You mean qualify to do——

Q. To do business.

A. ——to do business? Our attorney—I know that we naturally had to qualify in any State that we do business, and the papers were drawn and sent.

Q. You remember Mr. Purvis writing to you on April 1st, 1958, to that effect?

A. I don't remember. Undoubtedly he did.

Q. Would you recognize a letter if you saw it again?      A. Certainly.

(Mr. Conklin shows a document to Mr. O'Neill.)

Mr. O'Neill: If he intends to introduce this in evidence, we have no objection to it, with the understanding that this does not refer, so that there is

(Testimony of B. A. Williams, II.)

no misunderstanding, that this does not refer to the Securities and Exchange Commission, which is their own testimony. It has to do with business within the State. Other than that, we have no objection.

The Court: Are you offering it in evidence?

Mr. Conklin: I don't know, your Honor. I was going to show it to the witness. (Handing document to the witness.)

Q. (By Mr. Conklin): Do you recall receiving that letter? A. Yes, I do. [154]

Mr. Conklin: Your Honor, we offer this in evidence.

The Court: There being no objection, it will be received as exhibit——

The Clerk: Exhibit 30.

(The document referred to was received in evidence as Plaintiff's exhibit number 30.)

Q. (By Mr. Conklin): Would you read the salutation and the first paragraph of the letter, Mr. Williams, to the jury?

A. "Dear Buddy:

"In order to qualify your corporation to do business in the State of Washington it will be necessary to supply the Secretary of State of the State of Washington with the following information."

Q. And the letter is dated April 1st, 1958—right? A. Yes.

Q. Had Petroleum Corporation of America qualified to do business in the State of Washington by April 24th, 1958?

A. I really don't know, Mr. Conklin. We quali-

(Testimony of B. A. Williams, II.)

fied in several different States, and I couldn't actually say. [155]

Q. But you were at this time the President of the corporation?      A. Yes.

Mr. Conklin: Your Honor, as a group we offer three checks, the first dated April 25, 1958, payable to Montclair Investment Company for \$50; the next check dated April 25, 1958, payable to B. A. Williams for \$650; and the next, the last check, being dated April 29, 1958, payable to J. H. Ware, Junior, for \$500.

The Court: There being no objection, they will be received as exhibit number 31-A, B and C.

(The documents referred to were received in evidence as Plaintiff's exhibit number 31-A, B and C.)

Q. (By Mr. Conklin): Showing you a check dated April 28, 1958, I ask you, does your signature appear on that check? (Showing document to the witness.)      A. Yes, it does.

Q. And that check is payable to John and Mary Burton?

A. Abstractors in Santa Fe, New Mexico.

Q. For \$358.50, is that correct?      A. Yes.

Q. I show you a check dated May 2nd, 1958, and ask [156] you, does your signature appear on that? (Showing a document to the witness.)

A. Yes, it does.

Q. And that is drawn on the Bank of Hawaii payable to the Bank of Hawaii for \$7,500, is that correct?      A. Yes.



(Testimony of B. A. Williams, II.)

Q. I show you a check dated May 2nd, 1958, and ask you, does your signature appear on that check? (Showing a document to the witness.)

A. Yes, it does.

Q. And that check is payable to——

A. L. W. Kennedy.

Q. L. W. Kennedy for \$500?

A. That is true.

Q. I show you a check dated May 5, 1958, payable to——

A. Janoil.

Q. ——Janoil? A. Corporation.

Q. For \$500? A. Yes.

Q. And I ask you, does your signature appear on that check? (Showing a document to the witness.)

A. Yes, it does.

(Mr. Conklin shows documents to Mr. [157]

O'Neill.)

Mr. O'Neill: No objection.

Mr. Conklin: Your Honor, we offer these as a group.

The Court: Five or six checks? How many are there?

Mr. Conklin: Four.

The Clerk: Yes, your Honor, four.

The Court: They will be received as exhibit 32-A, B, C and D.

(The documents referred to were received in evidence as Plaintiff's exhibit numbers 32-A, B, C and D.)

Q. (By Mr. Conklin): Mr. Williams, showing you Plaintiff's exhibit 12, which constitutes your

(Testimony of B. A. Williams, II.)

personal checking account ending May 15, 1958, was your account closed at that time? (Handing document to the witness.)

A. You mean May 15th?

Q. Yes.

A. Not at that time. I don't believe it was.

Q. It was not?

A. Well, I mean, I don't know whether actually the account was closed when this mess came up.

Q. I am not trying to trick you.

A. I understand that. Are you sure it was closed?

Q. I don't know either. I am asking you. Were [158] there deposits made to that account after May 15, 1958, to and including, say, July 1st, 1958?

A. Well, they are not in the ledger.

Q. No, the ledger ends there. I am asking you this question because the ledger has ended and I wondered.

A. I wired \$2,500 over here. At that time the P.C. account, the Petroleum Corporation of America was over-drawn \$50,000. And I wired the \$2,500 to my account and it was applied to the P.C.A.'s account, which was all right, one and the same.

Q. In May, May 15th?

A. Whenever it was.

Q. But with regard to your personal account, after May 15th there were no further transactions? All the money was taken out to try to pay this P.C.A. over-draft, is that correct?

A. As far as I know, yes.

(Testimony of B. A. Williams, II.)

Q. Showing you a photostat of a check dated May 28, 1958, I ask you, is that your signature on that photostat? (Showing a document to the witness.)

A. Yes, this is my signature.

Q. And that check is payable to the Bureau of Land Management. It is for \$480?

A. That's right.

(Mr. Conklin shows document to Mr. [159] O'Neill.)

Mr. Conklin: Your Honor, we offer this photostat in evidence.

The Court: There being no objection, it will be received as exhibit 33.

(The document referred to was received in evidence as Plaintiff's exhibit number 33.)

Q. (By Mr. Conklin): I show you a photostat of a check dated June 11, 1958, Mr. Williams, and I ask you, is that a reproduction of your signature on the photostat? A. Yes, it is.

Q. And that check is payable to the Circle Drive Shopping Center, is it not? A. Yes, sir.

Q. That is June 11th, 1958? A. Yes.

Q. And the check is for \$25,000, is that correct?

A. Yes, sir.

(Mr. Conklin shows document to Mr. O'Neill.)

Mr. Conklin: Your Honor, we offer this check dated June 11, 1958, in evidence.

The Court: It will be received as exhibit number 34.

(Testimony of B. A. Williams, II.)

(The document referred to was received in evidence as Plaintiff's Exhibit number 34.)

Q. (By Mr. Conklin): Mr. Williams, I hand you Plaintiff's exhibits 29-A, 31-A, 32-A, 33 and 34 and ask you to look those over. (Handing documents to the witness.) Is it not true, Mr. Williams, that all of those checks were drawn on your personal account at the Bank of Hawaii?

A. Yes, they are.

Q. Do you know what the total of those checks is?

A. It have no idea.

Q. You heard Mr. Klenske's testimony here in Court yesterday, didn't you?

A. Yes.

Q. You heard Mr. Klenske testify, that he said that you were kiting? He said you admitted you were kiting. You heard him say that?

A. Yes.

Q. Did you say that to him?

A. I told him that this whole thing developed into that. It was not intentional and never started out to be intentional and all I started to do was trying to get the mess cleaned up.

Q. You heard Mr. Klenske's testimony here yesterday?

A. Yes, I did.

Q. And you heard Mr. Klenske say that you told him that you were kiting and you said yes? You heard him say that yesterday? [161]

A. Yes, I said I heard him say that.

Q. Did you say that?

A. I am telling you what I told him. I told him that that is what it developed into. It was not in-

(Testimony of B. A. Williams, II.)

tentional and we would get it straightened out as quickly as possible. Whatever you want to call it. I don't even know what that word means.

Q. Now, showing you Plaintiff's exhibit number 14, being a deposit slip to your personal account in the Bank of Hawaii for \$44,000 total, that is the amount you told Mr. Ranieri to deposit after Mr. Doing told you were going to receive these interests? A. Yes.

Q. Why did you tell Mr. Ranieri to deposit two checks, one for \$28,000 and the other for \$16,000 rather than one check for \$44,000?

A. I don't recall.

Q. You don't recall?

The Court: Is this a convenient place to interrupt your cross examination?

Mr. Conklin: Yes, your Honor.

The Court: Ladies and gentlemen of the jury, you will be excused for a 10-minute recess.

(Jury leaves courtroom at 10:50 a.m.) [162]

The Court: What is the status of your instructions, Mr. Conklin?

Mr. Conklin: Very rough, your Honor. However, I believe in a situation whereby if I had an hour, I think, I would be ready with that.

The Court: You don't have to prepare general ones.

Mr. Conklin: I understand that.

The Court: What is the status of yours?

Mr. O'Neill: I have prepared instructions, your Honor. I have five that I intend to tender. And

(Testimony of B. A. Williams, II.)

general instructions, I understand that the Court has those.

The Court: Yes.

Mr. O'Neill: These are just special ones.

The Court: That's all I have. To save time, get yours under way. I would like to get this case to the jury today.

Mr. Conklin: Your Honor, counsel intends to.

The Court: So do I. The Court will stand at recess.

(A recess was taken.)

#### After Recess

The Court: The record will show that the jury is present, the Defendant and his counsel. Proceed.

Q. (By Mr. Conklin): Mr. Williams, you [163] stated on direct examination that the money that was owed by you because of the over-draft, owing to the Bank of Hawaii, was paid back in June?

A. Yes, sir.

Q. Who paid it back?

A. I borrowed it from investors and I walked into Mr. Klenske's office on the afternoon that I had the money with Doctor Chun, and Mr. Klenske was tied up in a meeting so we left the money there at that time. There was a number of checks.

Q. And when you say you borrowed the money from investors, whom were you referring to?

A. People that had been investing with me.

Q. People in the Territory of Hawaii?

A. Yes.



(Testimony of B. A. Williams, II.)

Q. And have you paid back the loan you made from those investors?

A. Arrangements have been made. The money has been paid and was committed to Mr. O'Neill's trust, to them, yes, sir.

Q. You stated on direct examination that you never drew against the Seattle account?

A. I don't understand what you mean by draw. against. Sure, there were checks written against the Seattle account. [164]

Q. Did you write checks against the Seattle account?

A. Yes. Not only myself. Ralph Purvis and Warren Doing were writing.

Q. I was just trying to clear up my notes. I guess I didn't have it right. On direct examination you stated that you had bank accounts as follows: You had an operating account in Denver; you had an investors' account in Honolulu; and you had an account in Seattle to process checks?

A. Yes, sir.

Q. Now, the investors' account in Honolulu was carried—what was the name of the account?

A. What I meant by investor's account was the money received from the investors to go in on these joint ventures, that it was deposited to the account at the Bank of Hawaii. There were two accounts, one under the name of Petroleum Corporation of America and one under my name personally. I was the only one authorized to sign on both of those accounts.

(Testimony of B. A. Williams, II.)

Q. And did you have any other accounts in Honolulu in April and May of 1958?

A. Yes, I did, but it didn't enter into this.

Q. What other accounts did you have?

A. I had an account at the Bishop National Bank.

Q. And any other banks? [165]

A. In Honolulu?

Q. Yes. A. No, sir, I did not.

Q. In the Territory of Hawaii? A. No.

Q. Now, you stated on direct examination that you came out here to Hawaii to get investors for capital to drill wells, is that the idea?

A. Yes, sir.

Q. And that constitutes a joint venture between the investors and Petroleum Corporation of America?

A. It is a joint venture, limited partnership sort of affair, yes.

Q. And the purpose of putting up such funds by investors is to drill wells upon which the Petroleum Corporation of America has leases, is that the idea? A. Yes, sir.

Q. Then why would you deposit, invest money in your personal account? Doesn't that money belong to the investors and the corporation for the joint venture rather than you personally?

A. I thought I explained it. Petroleum Corporation of America account and mine are actually in effect one and the same. It doesn't make any difference. Our books are co-mingled. The C.P.A. firm

(Testimony of B. A. Williams, II.)

that handles the books takes [166] the deposits. There's an awful lot of bills I paid out of my personal account for one reason or another. Maybe it was more convenient at that time. Or checks were drawn against the P.C.A. account. It made no difference.

Q. However, it is true that funds received from investors here in the Territory for use in a joint venture with Petroleum Corporation could at will go into your personal account?

A. Oh, yes, it is the same thing.

Q. Showing you Plaintiff's exhibit number 34, being a check drawn on your personal account at the Bank of Hawaii, June 11th, 1958, for \$25,000 payable to Circle Drive Shopping Center, you stated on direct examination that you made a second payment to a Drive-In, that you were purchasing at this time, is that not correct?

A. Not a Drive-In; a Shopping Center.

Q. Shopping Center. Excuse me. A. Yes.

Q. Is that the Circle Drive Shopping Center?

A. Yes, sir.

Q. So that the check was for an additional amount to do it?

A. Yes, this particular check you mean?

Q. Yes.

A. This particular check was a post-dated check [167] that was given to Mr. Green when the deal was first consummated back in, I believe, it was March of 1958. This was to be the third payment. At that time I didn't have the money.

(Testimony of B. A. Williams, II.)

Q. And in June, 1958, who owned Circle Drive Shopping Center?

A. In June of 1958, Mr. Green had a half interest in it, and then we had a half interest.

Q. Who is "we"? A. I.

Q. You had a half interest?

A. That's right.

Q. So in March, 1958, you gave this gentleman a post-dated check dated June 11, 1958 for \$25,000 drawn on your personal account at the Bank of Hawaii, is that correct?

A. I gave him two checks at that time. Actually I gave him three checks. There is one for \$10,000 which was paid. There was one for \$27,000 odd amount which was paid. And this was this one that you have in your hand now which was not paid.

Q. But in March you had given him this check post-dated to June 11th for \$25,000 as a payment on the Shopping Center and drawn against your personal account, is that correct? [168]

A. That's right.

Q. Is the Shopping Center engaged in the oil business? A. No, sir, it is not.

Mr. Conklin: No more questions.

The Court: Redirect, Mr. O'Neill?

Mr. O'Neill: Just a couple of points.

#### Redirect Examination

Q. (By Mr. O'Neill): Mr. Williams, you have referred to what is marked here or admitted in evidence as people's exhibit number 30, being the letter

(Testimony of B. A. Williams, II.)

from Ralph Purvis. That letter or this exhibit does not pertain in any manner to the qualifications of Petroleum Corporation of America before the U. S. Securities Commission, does it?

A. None whatsoever. Or the Washington State was the one that we were involved with. This is merely a procedure that all corporations must follow in each of the States that they do business. Our corporation was qualified to do business in the Territory as well as Colorado and some other States.

Q. This merely refers to the fact that a company is doing business, like a license or something like that?      A. Yes.

Q. Within that State? [169]

A. I believe that is what it is.

Q. This has no reference whatsoever nor does it pertain in any manner to what we were discussing previously of the company having to qualify before the Securities Commission?

A. Not in the least, no.

Q. So it is two entirely different things there?

A. That's right.

Q. And this thing doesn't pertain to it?

A. I don't know what it says.

Q. Now, this last exhibit here that he has marked as people's exhibit number 34, purporting to be a check drawn on the Bank of Hawaii, was that check ever paid, \$25,000 to the Circle Shopping?      A. No, this check was never paid, no.

Q. It was never paid?      A. No.



(Testimony of B. A. Williams, II.)

Q. When did you give this check to Mr. Green?

A. When we first signed the agreement. There was to be several different payments on the Shopping Center. The whole deal was, I believe, some \$300,000. And I was to come up with my half of that.

Q. Now, going back to what has been marked in evidence here as people's exhibit number 29-A, which purports to be a series of checks, especially referring [170] to this one check to Jim Green for \$27,520,—

A. Yes.

Q. —now, this particular check had bounced once, didn't it?

A. Yes, it did.

Q. And when was that check given to Mr. Green?

A. That was given when this initial agreement—it was some time in March, I believe it was.

Q. It appears right on the back of the check as to when the thing was returned by the bank, doesn't it?

A. It was protested April 24th.

Q. And then it was put through after that?

A. Then it was redeposited, yes. He called me and I told him to put it back through.

Q. And that was based on the information you had received from Seattle that that money was there?

A. Yes.

Q. And that was the reason for doing it?

A. Yes.

Q. And all of these others, without having to



(Testimony of B. A. Williams, II.)

go through them all one by one, all of these others, weren't they all a bunch of post-dated checks?

A. Unfortunately, yes. When someone would come into the office or I would see someone, I would give him a post-dated check and then contact and tell him when to [171] put it in. These dates mean nothing to me. I don't even know when they were given.

Q. This was during the time when you were running the whole business and had everything on your shoulders?

A. That's right.

Q. And this exhibit 34, he evidently put that through the bank for some purpose of his own long after this thing was disclosed, is that right?

A. Yes.

Q. This check of June 11th?

A. Yes.

Q. This was during the time you were in Oklahoma after your father's death?

A. Yes.

Mr. O'Neill: That's all. Thank you.

The Court: Recross?

### Recross Examination

Q. (By Mr. Conklin): With regard to Mr. Purvis' letter of April 1st, 1958, Mr. Williams, isn't it true that Petroleum Corporation of America never did qualify to do business in the State of Washington?

A. I don't really know, Mr. Conklin. It might have been at the time the papers were completed that we found out it was going to be too expensive to register there. And there was just not much

(Testimony of B. A. Williams, II.)

profit in these deals [172] and we just couldn't afford to do it.

Q. But you stated on cross examination that you were working with Mr. Doing and Mr. Purvis in Seattle, is that correct? A. That is true.

Q. So that whether the corporation qualified to do business or not, you do not know? But the corporation was doing business in Washington, isn't that correct?

A. That's right. I leave all this up to my attorneys. I know absolutely nothing about it. If they don't get it in in time and I found out later that they sit around and fail to do things when they are supposed to, I don't know.

Q. Now, with regard to these post-dated checks, in March of 1958, weren't you receiving money from Hawaii investors to go into this joint venture with Petroleum Corporation of America?

A. I believe we did.

Q. During that period?

A. Yes, I believe so.

Q. In the early part of 1958?

A. Yes, during the early part, definitely, yes.

Q. And it was during that period that payments by such local investors could go into the Bank of Hawaii corporation account or into your personal account? A. That is true.

Q. And that is when you were post-dating these checks that you have spoken about on redirect?

A. That is true.

Mr. Conklin: No further questions.

(Testimony of B. A. Williams, II.)

Mr. O'Neill: That's all.

The Court: Just a moment. You testified that you were here for two weeks in November of 1956, approximately?

The Witness: Yes, sir, I was.

The Court: And then how many times did you come back to Honolulu after that?

The Witness: Roughly 30 times.

The Court: 30 times?

The Witness: Yes.

The Court: For extended stays or short stays?

The Witness: Well, it would vary. I think one time I spent maybe 40 days here or 30 or 40 days. But usually it would be for about a week. And I would go back to the mainland. One time I came in at 8:00 o'clock in the morning and left again that afternoon at 5:00. So it just varied.

The Court: But you made about 30 trips? [174]

The Witness: Yes, sir.

The Court: That's all. You may step down.

(Witness excused.) [175]

\* \* \* \* \*

Honolulu, T. H., February 3, 1959

(Court and counsel met in Chambers at 1:00 p.m. for the purpose of settling instructions as follows:)

The Court: Mr. O'Neill, it is my practice for the purpose of making the record less lengthy to go through the requested instructions informally and come to a decision on them, and then for the

purpose of the record those that I give over your objection or those which I refuse to give, go through numerically and state your grounds, and the government, too.

Mr. O'Neill: That is fine. Your Honor, I would like to do this for the purpose of the record, make some motions, and I would like to have them with the same effect now as though they were made at the conclusion of the government's case.

The Court: I will let you make them for the record.

Mr. O'Neill: On behalf of the Defendant, the Defendant requests the Court to enter a judgment of dismissal as against the information in all six counts based upon, one, that the government has failed to prove each and every material allegation of all six counts of the information. Two. That the government has failed to [189] prove a fraudulent scheme or intent at the time and prior to the time that the alleged acts recited in the information were committed. Three. That the government has failed to prove by even the slightest evidence any fraudulent intent whatsoever in the entire transactions complained of.

The Court: I will treat your motion as one made after all of the evidence is in and will reserve ruling on the motion and submit the case to the jury.

(The settling of instructions, discussion thereon, was had off the record.) \* \* \* \* \*

The Court: Section 1341 of Title 18 of the U. S. Code provides in part that whoever, having devised

or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses or representations, for the purpose of executing such scheme or artifice or attempting to do so, knowingly causes to be delivered by mail according to the direction thereon any matter or thing whatever, shall be guilty of an offense.

It is not necessary under this Section that such unlawful scheme actually succeed. The Court charges you that under the law which has just been read to you, it is immaterial whether the Defendant obtained any money [196] or not, and that it was not necessary for him to actually obtain any money by his acts to be guilty of the offense defined by the statute. When one does an unlawful act with knowledge that the use of the mails will follow in the ordinary course of business, or where he could have reasonably foreseen the use of the mails in the ordinary course of business, even though he did not actually intend that the mails be used, he causes the mails to be used, and it is an offense under Section 1341, Title 18.

The crime with which this Defendant is charged consists of two elements: First, devising or intending to devise any scheme or artifice to defraud; and, second, using or causing to be used U. S. Mails in the execution or attempted execution thereof. It is not necessary to prove that the accused personally did the acts constituting the offense charged. Whatever a person is legally capable of doing himself can be done through another as agent. Hence, if the acts



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The Court: I will treat your motion as one made after all of the evidence is in and will reserve ruling on the motion and submit the case to the jury.

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The crime with which this Defendant is charged consists of two elements: First, devising or intending to devise any scheme or artifice to defraud; and, second, using or causing to be used U. S. Mails in the execution or attempted execution thereof. It is not necessary to prove that the accused personally did the acts constituting the offense charged. Whatever a person is legally capable of doing himself can be done through another as agent. Hence, if the acts

of an employee or other agent are wilfully ordered or directed or wilfully authorized or consented to by the accused, the law holds the accused responsible for such acts as though personally committed by him.

Fraud is rarely susceptible of direct proof but must ordinarily be established by circumstantial evidence and legitimate inferences arising therefrom. Fraud may be established by facts and circumstances [197] from which reasonable men would infer that the transaction was fraudulent.

A check kite is defined as a scheme whereby a false credit is obtained by the exchange and passing of worthless checks between two or more banks.

You are further instructed that the obtaining of checking account credit from a bank, even temporarily, is a thing of value. [198]

\* \* \* \* \*

[Endorsed]: Filed July 7, 1959.

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[Endorsed]: No. 16530. United States Court of Appeals for the Ninth Circuit. B. A. Williams, II, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed and Docketed: July 8, 1959.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
For the Ninth Circuit

No. 16530

B. A. WILLIAMS II, also known as BYRON A.  
WILLIAMS II, Defendant-Appellant,

vs.

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

SPECIFICATION OF POINTS

Comes now the defendant above named, by and through his attorney, and hereby specifies the points relied upon by the defendant in the appeal of this case.

1. That the trial court erred as a matter of law in refusing to grant judgment of dismissal in favor of the defendant at the conclusion of the Government's case, and that the trial court prejudiced the rights of the defendant in refusing to allow the motion for judgment of dismissal to be argued outside of the presence of the jury.

2. That the trial court erred as a matter of law in refusing to dismiss the information on the motion of defendant inasmuch as the information did not constitute offense within the meaning of the statute.

3. That the defendant failed as a matter of law to prove each and every material allegation of the information in that the Government did not show

that the offense was willful, or that the defendant had benefited in any manner, or that the banks, as charged in the information, were injured in any manner as a result of the actions of the defendant.

4. That the trial court erred as a matter of law in refusing to grant to the defendant a new trial or judgment of dismissal on motion of the defendant.

/s/ FRANCIS P. O'NEILL,  
Attorney for Defendant-  
Appellant.

[Endorsed]: Filed July 29, 1959. Paul P. O'Brien, Clerk.